S. Hrg. 98-658

MISCELLANEOUS BOUNDARY ADJUSTMENTS, PUBLIC LAND CONVEYANCES, COMMEMORATION AND CEILING INCREASES

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S.J. Res. 139, S. 1868, S. 1775, S. 1790, S. 806, S. 1389, S. 1654, H.R. 451, S. 1547, H.R. 1191, S. 1860, S. 1688, and S. 1705

OCTOBER 6, 1983

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MISCELLANEOUS BOUNDARY ADJUSTMENTS, PUBLIC LAND CONVEYANCES, COMMEMORATION AND CEILING INCREASES

THURSDAY, OCTOBER 6, 1983

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD-628, Dirksen Office Building, Hon. Malcolm Wallop, presiding.

Present: Senators Wallop, Hecht, and Evans.

Also present: Tony Bevinetto, professional staff member; and Thomas B. Williams, professional staff member for the minority.

OPENING STATEMENT OF HON. MALCOLM WALLOP, A U.S. SENATOR FROM THE STATE OF WYOMING

Senator WALLOP. The subcommittee will come to order. Today the Subcommittee on Public Lands and Reserved Water will hear testimony on miscellaneous bills dealing with boundary adjustments, ceiling increases, conveyances, commemorations, and deauthorization. Without objection, I will place a copy of each of the bills in the hearing record.

The hearing record will remain open for 2 weeks after today and written testimony can be submitted to the subcommittee on any of these measures.

We have Senators who wish to testify on bills in which they have an interest or which they sponsored. The Senators will be heard as they appear and I ask the indulgence of the other witnesses and ask that we be allowed to change the order to accommodate Senators as this seems to be a rather busy day here.

At this point I will insert the text of the legislation before the subcommittee into the record.

[The texts of the bills, resolutions, and acts follow:]

II

98TH CONGRESS
1ST SESSION

S. J. RES. 139

To commemorate the centennial of Eleanor Roosevelt's birth.

IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 25), 1983

Mr. MOYNIHAN (for himself, Mr. D'AMATO, and Mr. BAKER) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

---

JOINT RESOLUTION

To commemorate the centennial of Eleanor Roosevelt's birth.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress finds and declares that:

(1) Eleanor Roosevelt, who was First Lady of the United States from 1933 to 1945, was one of the country's great First Ladies;

(2) Born into wealth and privilege, herself, Eleanor Roosevelt nevertheless worked tirelessly to secure opportunities for disadvantaged Americans and to improve the lot of the needy elsewhere, and particularly in developing countries;

(3) Both during and after her service in the White House, Eleanor Roosevelt campaigned indefatigably for human rights in the United States and throughout the world;

(4) Eleanor Roosevelt devoted her efforts especially to promoting the welfare of children;

(5) For this service, for her articulate and compassionate advocacy of the highest American ideals, and for demonstrating by personal example the capacities of American women to succeed in areas of daily life and work from which they were frequently excluded in her day, Eleanor Roosevelt earned a place of honor and respect in the hearts of the American people; and

(6) October 11, 1984, marks the centennial of Eleanor Roosevelt's birth, and it is appropriate for Americans to mark this occasion with appropriate commemorations during 1984.

SEC. 2. (a) There is hereby established a Commission on the Eleanor Roosevelt Centennial.

(b) The membership of the Commission shall consist of the following:

(1) two Members of the House of Representatives, designated by the Speaker of the House;

(2) two Members of the Senate, designated by the President of the Senate;

(3) the Director of the National Park Service, ex officio;

(4) the Archivist of the United States, ex officio;

(5) the Librarian of Congress, ex officio;

(6) the Governor of the State of New York, ex officio;

(7) the County Executive of Dutchess County, New York, ex officio;

(8) the surviving children of Mrs. Eleanor Roosevelt; and

(9) the chairman of the Eleanor Roosevelt Institute.

(c) Commission members shall designate one of their number as Chairman.

SEC. 3. The Commission established by section 2 of this Act shall—

(1) encourage and recognize appropriate observances and commemorations, throughout the United States, of the one hundredth anniversary of the birth of Eleanor Roosevelt;

(2) provide advice and assistance in establishing such observances and commemorations; and

(3) coordinate the activities of Federal agencies in support of such observances and commemorations.

Sec. 4. (a) The Commission shall meet no later than thirty days after enactment of this Act at a place and location determined by the Librarian of Congress, and at such intervals thereafter as the Commission may decide.

(b) The Administrator of General Services and the Director of the National Park Service shall provide the Commission such assistance and facilities as may be necessary to conduct its meetings.

(c) The Commission may accept donations of money and services to carry out its responsibilities.

(d) The Eleanor Roosevelt Institute, a not-for-profit organization incorporated in the State of New York, and successor organization to the Eleanor Roosevelt Memorial Foundation, chartered pursuant to Public Law 88-11, shall provide staff assistance to and coordinate policies and events for the Commission.

(e)(1) The private members of the Commission shall be reimbursed for their travel and compensated for their time engaged on Commission business at the daily rate established for employees at grade eighteen of the General Schedule.

(2) The Secretary of the Interior is authorized, out of the appropriations otherwise available to him, such sums as

may be necessary to carry out the provisions of this paragraph.

Sec. 5. (a) In commemoration of the one hundredth anniversary of the birth of Eleanor Roosevelt, the Secretary of the Interior, acting through the Director of the National Park Service, shall complete the renovation of the Eleanor Roosevelt National Historic Site at Val-Kill in Hyde Park, New York, in fiscal year 1984 sufficiently to open it to full public visitation.

(b) The Secretary of the Interior is authorized, out of funds available to him in any fiscal year, such sums as may be necessary to carry out the purposes of this section.

○

II

98TH CONGRESS
1ST SESSION

S. 1868

To add $17,996,558 to the budget ceiling for new acquisitions at Sleeping Bear Dunes National Lakeshore.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21 (legislative day, SEPTEMBER 19), 1983

Mr. RIEGLE (for himself and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To add $17,996,558 to the budget ceiling for new acquisitions at Sleeping Bear Dunes National Lakeshore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Act entitled "An Act to establish in the State of Michigan the Sleeping Bear Dunes National Lakeshore, and for other purposes", approved October 21, 1970 (Public Law 91-479; 16 U.S.C. 460x-14), is amended by striking out "$66,153,000" and inserting in lieu thereof "$84,149,558".

○

II

98TH CONGRESS
1ST SESSION

S. 1775

To repeal the designation of the Georgia O'Keeffe National Historical Site.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, AUGUST 1), 1983

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To repeal the designation of the Georgia O'Keeffe National Historical Site.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Act entitled "An Act to improve the administration of the Historic Sites, Buildings and Antiquities Act of 1935 (49 Stat. 666)", approved September 8, 1980 (Public Law 96-344), is repealed.

○

II

98TH CONGRESS
1ST SESSION

S. 1790

To authorize the Secretary of the Interior to enter into a contract or cooperative agreement with the Art Barn Association to assist in the preservation and interpretation of the Art Barn and Pierce Mill located in Rock Creek Park within the District of Columbia.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, AUGUST 1), 1983

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To authorize the Secretary of the Interior to enter into a contract or cooperative agreement with the Art Barn Association to assist in the preservation and interpretation of the Art Barn and Pierce Mill located in Rock Creek Park within the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) in furtherance of section 2(e) of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (49 Stat. 656; 16 U.S.C. 462(e)), and in order to preserve for the benefit and inspiration of the people of the United States the Art Barn and the Pierce Mill located in Rock Creek Park within the District of Columbia, the Secretary of the Interior is authorized to enter into contracts or cooperative agreements with the Art Barn Association to assist in the preservation and interpretation of the barn and mill.

(b) Pursuant to subsection (a) and subject to such terms and conditions as the Secretary of the Interior may prescribe, funds appropriated to the Secretary of the Interior for operation and maintenance of the Art Barn and Pierce Mill may be made available to the Art Barn Association.

○

II

98TH CONGRESS
1ST SESSION

S. 806

To provide for a plan to reimburse the Okefenoke Rural Electric Membership Corporation for the costs incurred in installing electrical service to the Cumberland Island National Seashore.

IN THE SENATE OF THE UNITED STATES

MARCH 15 (legislative day, MARCH 14), 1983

Mr. NUNN (for himself and Mr. MATTINGLY) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for a plan to reimburse the Okefenoke Rural Electric Membership Corporation for the costs incurred in installing electrical service to the Cumberland Island National Seashore.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any other provision of law, the Secretary of the Interior shall reimburse the Okefenoke Rural Electric Membership Corporation for the cost incurred by such corporation in installing transmission lines, transformers, and electric meters which serve the administrative needs of the Federal Government within Cumberland Island National Seashore in the State of Georgia. No such payment shall be made unless—

(1) the Corporation has entered into a written agreement with the Secretary which provides for—

(A) the continued adequate provision of electrical service by the Corporation at reasonable rates to satisfy the administrative needs of the seashore, as determined by the Secretary, and

(B) the prompt repayment of the Secretary of any amounts paid by the Secretary under this Act, plus interest, in the event of the Corporation's future failure to provide electrical service under terms provided pursuant to paragraph (A); and

(2) the Secretary has performed an audit of the Corporation's records to determine the amount appropriately due the Corporation under the terms of this Act, which amount so determined by the Secretary shall constitute the maximum amount to be paid.

The amount so determined by the Secretary shall be reduced by an amount equal to the sum of all reimbursement for such facilities paid to the Corporation by any governmental or nongovernmental source before the date on which payment is made by the Secretary under this Act.

(b) There is authorized to be appropriated to carry out the provisions of subsection (a) not more than $338,000.

○

II

98TH CONGRESS
1ST SESSION

S. 1389

To transfer administration of certain lands in California and Nevada to the Bureau of Land Management.

IN THE SENATE OF THE UNITED STATES

MAY 26 (legislative day, MAY 25), 1983

Mr. LAXALT (for himself and Mr. HECHT) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To transfer administration of certain lands in California and Nevada to the Bureau of Land Management.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, title to and jurisdiction over a tract of land, which is part of the Death Valley National Monument at the western boundary of the Monument and described in the map entitled "   ", dated June 1983, which shall be on file and available for inspection at the Office of the Bureau of Land Management, is hereby transferred to the Bureau of

Land Management to be administered as a part of the public lands.

○

II

98TH CONGRESS
1ST SESSION

S. 1654

To validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company.

IN THE SENATE OF THE UNITED STATES

JULY 21 (legislative day, JULY 18), 1983

Mr. WILSON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Railroad Right-of-Way Conveyance Validation Act of 1983".

VALIDATION OF CONVEYANCES

SEC. 2. Except as provided in section 6, the conveyances described in section 3 (involving certain lands in San Joaquin County, State of California), section 4 (involving certain lands in Sacramento County, State of California), and section 5 (involving certain land in Kings County, State of California), concerning lands that form parts of the right-of-way granted by the United States to the Central Pacific Railway Company in the Act entitled "An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and Other Purposes", approved July 1, 1862 (12 Stat. 489), hereby are legalized, validated, and confirmed, as far as any interest of the United States in such lands is concerned, with the same force and effect as if the land involved in each such conveyance had been held, on the date of such conveyance, under absolute fee simple title by the grantor of such land.

CONVEYANCES OF LANDS IN SAN JOAQUIN COUNTY, STATE OF CALIFORNIA

SEC. 3. The conveyances of lands in San Joaquin County, State of California, referred to in section 2 are as follows:

(1) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Harvey Davies and Mary E. Davies, grantees, on January 13, 1981, and recorded as instrument numbered 81013684 on March 6, 1981, in the official records of San Joaquin County, State of California;

(2) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Gloria Martinez, Tina Marie Aldaco, and Yolanda Martinez, grantees, on January 13, 1981, and recorded as instrument numbered 81013685 on March 6, 1981, in the official records of San Joaquin County, State of California;

(3) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Gregorio Estrada Blanco and Antonio Miranda Blanco, grantees, on January 13, 1981, and recorded as instrument numbered 81013686 on March 6, 1981, in the official records of San Joaquin County, State of California;

(4) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Iris Fong, grantee, on January 13, 1981, and recorded as instrument numbered 81013687 on March 6, 1981, in the official records of San Joaquin County, State of California;

(5) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Margaret Gieseke, grantee, on October 31, 1939, and recorded on February 13, 1940,

in volume 669, page 473, of the book of official records of San Joaquin County, State of California;

(6) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Henry Meiburg and Erna Meiburg, grantees, on October 31, 1939, and recorded on February 13, 1940, in volume 669, page 476, of the book of official records of San Joaquin County, State of California;

(7) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Frank Ward, grantee, on October 31, 1939, and recorded on February 13, 1940, in volume 669, page 474, of the book of official records of San Joaquin County, State of California;

(8) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Frank Penny, grantee, on October 31, 1939, and recorded on February 13, 1940, in volume 676, page 275, of the book of official records of San Joaquin County, State of California;

(9) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and John B. Coughlan, grantee, on October 31, 1939, and recorded on February 13,

1940, in volume 676, page 277, of the book of official records of San Joaquin County, State of California;

(10) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and the Fabian-Grunauer Company, grantee, on January 7, 1930, and recorded on February 7, 1930, in volume 1, page 86, of the book of offical records of San Joaquin County, State of California;

(11) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Libby McNeill and Libby, grantee, on October 31, 1928, and recorded on November 30, 1928, in volume 255, page 383, of the book of offical records of San Joaquin County, State of California;

(12) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and A. J. Hussell, grantee, on January 7, 1930, and recorded on February 13, 1930, in volume 314, page 138, of the book of offical records of San Joaquin County, State of California;

(13) the conveyance entered into between Charles Crocker, grantor, and Frank Curran, grantee, on January 8, 1880, and recorded on January 31, 1883, in

book A, volume 49, page 600, of the deeds of San Joaquin County, State of California;

(14) the conveyance entered into between the Pacific Improvement Company, grantor, and Edward Curran, grantee, on May 24, 1901, and recorded on June 26, 1901, in book A, volume 116, page 118, of the deeds of San Joaquin County, State of California, excluding that portion of such conveyance concerning lots 14 and 15 in block 15 as designated on the map entitled "Map of the Town of Tracy San Joaquin California", filed at the request of the Southern Pacific Railroad on June 29, 1892, in volume 2, page 63, of the maps and plats of San Joaquin County, State of California;

(15) the conveyance entered into between the Pacific Improvement Company, grantor, and Sarah Idelia Duffy, grantee, on December 9, 1891, and recorded on December 31, 1891, in book A, volume 75, page 59, of the deeds of San Joaquin County, State of California;

(16) the conveyance entered into between the Pacific Improvement Company, grantor, and C. A. Slack, grantee, on May 29, 1909, and recorded on November 10, 1909, in book A, volume 182, page 304, of the deeds of San Joaquin County, State of California;

(17) the conveyance entered into between the Pacific Improvement Company, grantor, and Frank Brusso, grantee, on August 23, 1911, and recorded on October 11, 1911, in book A, volume 205, page 448, of the deeds of San Joaquin County, State of California;

(18) the conveyance entered into between the Pacific Improvement Company, grantor, and Lee Chong, grantee, on September 30, 1911, and recorded on October 23, 1911, in book A, volume 205, page 471, of the deeds of San Joaquin County, State of California;

(19) the conveyance entered into between the Pacific Improvement Company, grantor, and Lee Jung, grantee, on September 30, 1911, and recorded on October 23, 1911, in book A, volume 205, page 470, of the deeds of San Joaquin County, State of California;

(20) the conveyance entered into between the Pacific Improvement Company, grantor, and Ju Wing, grantee, on January 25, 1911, and recorded on February 14, 1911, in book A, volume 201, page 105, of the deeds of San Joaquin County, State of California;

(21) the conveyance entered into between the Pacific Improvement Company, grantor, and A. Grunauer, grantee, on June 8, 1910, and recorded on June 17, 1910, in book A, volume 187, page 520, of the

deeds of San Joaquin County, State of California, excluding that portion of such conveyance concerning lots 12 and 13 in block 36 as designated on the map entitled "Map of the Town of Tracy San Joaquin California", filed at the request of the Southern Pacific Railroad on June 29, 1892, in volume 2, page 63, of the maps and plats of San Joaquin County, State of California;

(22) the conveyance entered into between the Pacific Improvement Company, grantor, and Josie Batten, grantee, on October 10, 1910, and recorded on December 5, 1910, in book A, volume 193, page 477, of the deeds of San Joaquin County, State of California;

(23) the conveyance entered into between the Pacific Improvement Company, grantor, and Frank Brusso, grantee, on March 18, 1912, and recorded on September 5, 1912, in book A, volume 211, page 459, of the deeds of San Joaquin County, State of California;

(24) the conveyance entered into between the Pacific Improvement Company, grantor, and George Leonard, grantee, on October 16, 1911, and recorded on December 7, 1911, in book A, volume 207, page

205, of the deeds of San Joaquin County, State of California;

(25) the conveyance entered into between the Pacific Improvement Company, grantor, and George Leonard, grantee, on December 12, 1911, and recorded on December 20, 1911, in book A, volume 205, page 587, of the deeds of San Joaquin County, State of California;

(26) the conveyance entered into between the Pacific Improvement Company, grantor, and Jacob Stritzinger, grantee, on February 10, 1912, and recorded on December 29, 1914, in book A, volume 250, page 377, of the deeds of San Joaquin County, State of California;

(27) the conveyance entered into between the Pacific Improvement Company, grantor, and M. R. Fothergill, grantee, on July 13, 1917, and recorded on July 29, 1917, in book A, volume 315, page 34, of the deeds of San Joaquin County, State of California;

(28) the conveyance entered into between the Pacific Improvement Company, grantor, and Miles J. Brown, J. C. Droge, and W. F. Sattler, grantees, on March 29, 1916, and recorded on April 1, 1916, in book A, volume 273, page 375, of the deeds of San

Joaquin County, State of California, excluding that portion of such conveyance concerning—

(A) lots 1 through 9, and lots 12 and 13, in block 37,

(B) lots 1 through 5 in block 38;

(C) lots 11, 12, 19, and 20 in block 45;

(D) lots 11 through 18 in block 48; and

(E) lots 15 through 18, and lots 20 through 23, in block 51;

as designated on the map entitled "Map of the Town of Tracy San Joaquin California", filed at the request of the Southern Pacific Railroad on June 29, 1892, in volume 2, page 63, of the maps and plats of San Joaquin County, State of California;

(29) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Manuel Joseph Silva, Mary Ann Gloria Silva, and Anna I. Silva, grantees, on January 13, 1981, and recorded as instrument numbered 81013675 on March 6, 1981, in the official records of San Joaquin County, State of California;

(30) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Ada Lotierzo, grantee, on January 13, 1981, and recorded as instrument numbered 81013677 on March

6, 1981, in the official records of San Joaquin County, State of California;

(31) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Marie E. Wilson, grantee, on January 13, 1981, and recorded as instrument numbered 81013678 on March 6, 1981, in the official records of San Joaquin County, State of California;

(32) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and the Home Mission Board of the Southern Baptist Convention, grantee, on January 13, 1981, and recorded as instrument numbered 81013676 on March 6, 1981, in the official records of San Joaquin County, State of California;

(33) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Jose Gutierrez and Maria Gutierrez, grantees, on January 13, 1981, and recorded as instrument numbered 81013674 on March 6, 1981, in the official records of San Joaquin County, State of California;

(34) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Odessa Jones Manley, grantee, on January 13, 1981, and recorded as instrument numbered 81013679

on March 6, 1981, in the official records of San Joaquin County, State of California;

(35) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and William Assad, grantee, on January 13, 1981, and recorded as instrument numbered 81013680 on March 6, 1981, in the official records of San Joaquin County, State of California;

(36) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Larry C. Fragoso, grantee, on January 13, 1981, and recorded as instrument numbered 81013681 on March 6, 1981, in the official records of San Joaquin County, State of California; and

(37) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and the Housing Authority of the County of San Joaquin, grantee, on January 13, 1981, and recorded as instrument numbered 81013682 on March 6, 1981, in the official records of San Joaquin County, State of California.

CONVEYANCES OF LANDS IN SACRAMENTO COUNTY, STATE OF CALIFORNIA

SEC. 4. The conveyances of lands in Sacramento County, State of California, referred to in section 2 are as follows:

(1) the conveyance entered into between the Southern Pacific Company, grantor, and Walker & Donant, grantee, on February 24, 1967, and recorded as instrument numbered 13155 on March 1, 1967, in book 67-03-01, page 284, of the official records of Sacramento County, State of California; and

(2) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Walker and Donant, grantee, on September 20, 1976, and recorded as instrument numbered 125515 on October 19, 1976, in book 7610-19, page 567, of the official records of Sacramento County, State of California.

CONVEYANCE OF LAND IN KINGS COUNTY, STATE OF CALIFORNIA

SEC. 5. The conveyance of land in Kings County, State of California, referred to in section 2 is as follows: the conveyance entered into between the Southern Pacific Company, grantor, and the Continental Grain Company, grantee, on August 7, 1968, and recorded as instrument numbered

11974 on September 30, 1968, in book 927, page 898, of the official records of Kings County, State of California.

LIMITATIONS ON VALIDATION OF CONVEYANCES

SEC. 6. (a) Nothing in this Act shall be construed to—

(1) diminish the right-of-way referred to in section 2 to a width of less than fifty feet on each side of the center of the main track or tracks maintained by the Southern Pacific Transportation Company on the date of the enactment of this Act; or

(2) legalize, validate, or confirm, with respect to any land that is the subject of a conveyance referred to in section 3, 4, or 5, any right or title to, or interest in, such land arising out of adverse possession, prescription, or abandonment, and not confirmed by such conveyance.

(b) There is reserved to the United States all oil, coal, or other minerals in any land that forms a part of the right-of-way referred to in section 2 and is the subject of a conveyance referred to in section 3, 4, or 5, together with the right to prospect for, mine, and remove such oil, coal, or other minerals under such rules and regulations as the Secretary of the Interior may prescribe.

○

II

98TH CONGRESS
1ST SESSION

H. R. 451

IN THE SENATE OF THE UNITED STATES

MAY 18 (legislative day, MAY 16), 1983

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To validate conveyances of certain lands in the State of California that form part of the right-of-way granted by the United States to the Central Pacific Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Railroad Right-of-Way Conveyance Validation Act of 1983".

VALIDATION OF CONVEYANCES

SEC. 2. Except as provided in section 6, the conveyances described in section 3 (involving certain lands in San Joaquin County, State of California), section 4 (involving certain lands in Sacramento County, State of California), and section 5 (involving certain land in Kings County, State of

California), concerning lands that form parts of the right-of-way granted by the United States to the Central Pacific Railway Company in the Act entitled "An Act to aid in the Construction of a Railroad and Telegraph Line from the Missouri River to the Pacific Ocean, and to secure to the Government the Use of the same for Postal, Military, and Other Purposes", approved July 1, 1862 (12 Stat. 489), hereby are legalized, validated, and confirmed, as far as any interest of the United States in such lands is concerned, with the same force and effect as if the land involved in each such conveyance had been held, on the date of such conveyance, under absolute fee simple title by the grantor of such land.

CONVEYANCES OF LANDS IN SAN JOAQUIN COUNTY, STATE OF CALIFORNIA

SEC. 3. The conveyances of lands in San Joaquin County, State of California, referred to in section 2 are as follows:

(1) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Harvey Davies and Mary E. Davies, grantees, on January 13, 1981, and recorded as instrument numbered 81013684 on March 6, 1981, in the official records of San Joaquin County, State of California;

(2) the conveyance entered into between the Southern Pacific Transportation Company, grantor,

and Gloria Martinez, Tina Marie Aldaco, and Yolanda Martinez, grantees, on January 13, 1981, and recorded as instrument numbered 81013685 on March 6, 1981, in the official records of San Joaquin County, State of California;

(3) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Gregorio Estrada Blanco and Antonio Miranda Blanco, grantees, on January 13, 1981, and recorded as instrument numbered 81013686 on March 6, 1981, in the official records of San Joaquin County, State of California;

(4) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Iris Fong, grantee, on January 13, 1981, and recorded as instrument numbered 81013687 on March 6, 1981, in the official records of San Joaquin County, State of California;

(5) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Margaret Gieseke, grantee, on October 31, 1939, and recorded on February 13, 1940, in volume 669, page 473, of the book of official records of San Joaquin County, State of California;

(6) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Henry Meiburg and Erna Meiburg, grantees, on October 31, 1939, and recorded on February 13, 1940, in volume 669, page 476, of the book of official records of San Joaquin County, State of California;

(7) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Frank Ward, grantee, on October 31, 1939, and recorded on February 13, 1940, in volume 669, page 474, of the book of official records of San Joaquin County, State of California;

(8) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Frank Penny, grantee, on October 31, 1939, and recorded on February 13, 1940, in volume 676, page 275, of the book of official records of San Joaquin County, State of California;

(9) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and John B. Coughlan, grantee, on October 31, 1939, and recorded on February 13, 1940, in volume 676, page 277, of the book of official records of San Joaquin County, State of California;

(10) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and the Fabian-Grunauer Company, grantee, on January 7, 1930, and recorded on February 7, 1930, in volume 1, page 86, of the book of offical records of San Joaquin County, State of California;

(11) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and Libby McNeill and Libby, grantee, on October 31, 1928, and recorded on November 30, 1928, in volume 255, page 383, of the book of offical records of San Joaquin County, State of California;

(12) the conveyance entered into between the Central Pacific Railway Company and the Southern Pacific Company, grantors, and A. J. Hussell, grantee, on January 7, 1930, and recorded on February 13, 1930, in volume 314, page 138, of the book of offical records of San Joaquin County, State of California;

(13) the conveyance entered into between Charles Crocker, grantor, and Frank Curran, grantee, on January 8, 1880, and recorded on January 31, 1883, in book A, volume 49, page 600, of the deeds of San Joaquin County, State of California;

(14) the conveyance entered into between the Pacific Improvement Company, grantor, and Edward Curran, grantee, on May 24, 1901, and recorded on June 26, 1901, in book A, volume 116, page 118, of the deeds of San Joaquin County, State of California, excluding that portion of such conveyance concerning lots 14 and 15 in block 15 as designated on the map entitled "Map of the Town of Tracy San Joaquin California", filed at the request of the Southern Pacific Railroad on June 29, 1892, in volume 2, page 63, of the maps and plats of San Joaquin County, State of California;

(15) the conveyance entered into between the Pacific Improvement Company, grantor, and Sarah Idelia Duffy, grantee, on December 9, 1891, and recorded on December 31, 1891, in book A, volume 75, page 59, of the deeds of San Joaquin County, State of California;

(16) the conveyance entered into between the Pacific Improvement Company, grantor, and C. A. Slack, grantee, on May 29, 1909, and recorded on November 10, 1909, in book A, volume 182, page 304, of the deeds of San Joaquin County, State of California;

(17) the conveyance entered into between the Pacific Improvement Company, grantor, and Frank

Brusso, grantee, on August 23, 1911, and recorded on October 11, 1911, in book A, volume 205, page 448, of the deeds of San Joaquin County, State of California;

(18) the conveyance entered into between the Pacific Improvement Company, grantor, and Lee Chong, grantee, on September 30, 1911, and recorded on October 23, 1911, in book A, volume 205, page 471, of the deeds of San Joaquin County, State of California;

(19) the conveyance entered into between the Pacific Improvement Company, grantor, and Lee Jung, grantee, on September 30, 1911, and recorded on October 23, 1911, in book A, volume 205, page 470, of the deeds of San Joaquin County, State of California;

(20) the conveyance entered into between the Pacific Improvement Company, grantor, and Ju Wing, grantee, on January 25, 1911, and recorded on February 14, 1911, in book A, volume 201, page 105, of the deeds of San Joaquin County, State of California;

(21) the conveyance entered into between the Pacific Improvement Company, grantor, and A. Grunauer, grantee, on June 8, 1910, and recorded on June 17, 1910, in book A, volume 187, page 520, of the deeds of San Joaquin County, State of California, excluding that portion of such conveyance concerning lots

12 and 13 in block 36 as designated on the map entitled "Map of the Town of Tracy San Joaquin California", filed at the request of the Southern Pacific Railroad on June 29, 1892, in volume 2, page 63, of the maps and plats of San Joaquin County, State of California;

(22) the conveyance entered into between the Pacific Improvement Company, grantor, and Josie Batten, grantee, on October 10, 1910, and recorded on December 5, 1910, in book A, volume 193, page 477, of the deeds of San Joaquin County, State of California;

(23) the conveyance entered into between the Pacific Improvement Company, grantor, and Frank Brusso, grantee, on March 18, 1912, and recorded on September 5, 1912, in book A, volume 211, page 459, of the deeds of San Joaquin County, State of California;

(24) the conveyance entered into between the Pacific Improvement Company, grantor, and George Leonard, grantee, on October 16, 1911, and recorded on December 7, 1911, in book A, volume 207, page 205, of the deeds of San Joaquin County, State of California;

(25) the conveyance entered into between the Pacific Improvement Company, grantor, and George Leonard, grantee, on December 12, 1911, and recorded on December 20, 1911, in book A, volume 205, page 587, of the deeds of San Joaquin County, State of California;

(26) the conveyance entered into between the Pacific Improvement Company, grantor, and Jacob Stritzinger, grantee, on February 10, 1912, and recorded on December 29, 1914, in book A, volume 250, page 377, of the deeds of San Joaquin County, State of California;

(27) the conveyance entered into between the Pacific Improvement Company, grantor, and M. R. Fothergill, grantee, on July 13, 1917, and recorded on July 29, 1917, in book A, volume 315, page 34, of the deeds of San Joaquin County, State of California;

(28) the conveyance entered into between the Pacific Improvement Company, grantor, and Miles J. Brown, J. C. Droge, and W. F. Sattler, grantees, on March 29, 1916, and recorded on April 1, 1916, in book A, volume 273, page 375, of the deeds of San Joaquin County, State of California, excluding that portion of such conveyance concerning—

(A) lots 1 through 9, and lots 12 and 13, in block 37;

(B) lots 1 through 5 in block 38;

(C) lots 11, 12, 19, and 20 in block 45;

(D) lots 11 through 18 in block 48; and

(E) lots 15 through 18, and lots 20 through 23, in block 51;

as designated on the map entitled "Map of the Town of Tracy San Joaquin California", filed at the request of the Southern Pacific Railroad on June 29, 1892, in volume 2, page 63, of the maps and plats of San Joaquin County, State of California;

(29) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Manuel Joseph Silva, Mary Ann Gloria Silva, and Anna I. Silva, grantees, on January 13, 1981, and recorded as instrument numbered 81013675 on March 6, 1981, in the official records of San Joaquin County, State of California;

(30) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Ada Lotierzo, grantee, on January 13, 1981, and recorded as instrument numbered 81013677 on March 6, 1981, in the official records of San Joaquin County, State of California;

(31) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Marie E. Wilson, grantee, on January 13, 1981, and recorded as instrument numbered 81013678 on March 6, 1981, in the official records of San Joaquin County, State of California;

(32) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and the Home Mission Board of the Southern Baptist Convention, grantee, on January 13, 1981, and recorded as instrument numbered 81013676 on March 6, 1981, in the official records of San Joaquin County, State of California;

(33) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Jose Gutierrez and Maria Gutierrez, grantees, on January 13, 1981, and recorded as instrument numbered 81013674 on March 6, 1981, in the official records of San Joaquin County, State of California;

(34) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Odessa Jones Manley, grantee, on January 13, 1981, and recorded as instrument numbered 81013679 on March 6, 1981, in the official records of San Joaquin County, State of California;

(35) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and William Assad, grantee, on January 13, 1981, and recorded as instrument numbered 81013680 on March 6, 1981, in the official records of San Joaquin County, State of California;

(36) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Larry C. Fragoso, grantee, on January 13, 1981, and recorded as instrument numbered 81013681 on March 6, 1981, in the official records of San Joaquin County, State of California; and

(37) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and the Housing Authority of the County of San Joaquin, grantee, on January 13, 1981, and recorded as instrument numbered 81013682 on March 6, 1981, in the official records of San Joaquin County, State of California.

CONVEYANCES OF LANDS IN SACRAMENTO COUNTY, STATE OF CALIFORNIA

SEC. 4. The conveyances of lands in Sacramento County, State of California, referred to in section 2 are as follows:

(1) the conveyance entered into between the Southern Pacific Company, grantor, and Walker & Donant, grantee, on February 24, 1967, and recorded as instrument numbered 13155 on March 1, 1967, in book 67-03-01, page 284, of the official records of Sacramento County, State of California; and

(2) the conveyance entered into between the Southern Pacific Transportation Company, grantor, and Walker and Donant, grantee, on September 20, 1976, and recorded as instrument numbered 125515 on October 19, 1976, in book 7610-19, page 567, of the official records of Sacramento County, State of California.

CONVEYANCE OF LAND IN KINGS COUNTY, STATE OF CALIFORNIA

SEC. 5. The conveyance of land in Kings County, State of California, referred to in section 2 is as follows: the conveyance entered into between the Southern Pacific Company, grantor, and the Continental Grain Company, grantee, on August 7, 1968, and recorded as instrument numbered 11974 on September 30, 1968, in book 927, page 898, of the official records of Kings County, State of California.

LIMITATIONS ON VALIDATION OF CONVEYANCES

SEC. 6. (a) Nothing in this Act shall be construed to—

(1) diminish the right-of-way referred to in section 2 to a width of less than fifty feet on each side of the center of the main track or tracks maintained by the Southern Pacific Transportation Company on the date of the enactment of this Act; or

(2) legalize, validate, or confirm, with respect to any land that is the subject of a conveyance referred to in section 3, 4, or 5, any right or title to, or interest in, such land arising out of adverse possession, prescription, or abandonment, and not confirmed by such conveyance.

(b) There is reserved to the United States all oil, coal, or other minerals in any land that forms a part of the right-of-way referred to in section 2 and is the subject of a conveyance referred to in section 3, 4, or 5, together with the right to prospect for, mine, and remove such oil, coal, or other minerals under such rules and regulations as the Secretary of the Interior may prescribe.

Passed the House of Representatives May 17, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

98TH CONGRESS
1ST SESSION

S. 1547

To amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 27, 1983

Mr. ARMSTRONG (for himself and Mr. HART) introduced the following bill, which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to grant certain lands to the town of Olathe, Colorado, for the protection of its water supply", approved March 3, 1919 (40 Stat. 1317), is amended by—

(1) striking out "to have and to hold said lands for the purpose of the protection of the reservoirs and water supply pipelines and waterworks system of said town";

(2) striking out "*And provided further,* That title to the land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purposes herein provided."; and

(3) adding at the end thereof the following: "*And provided further,* That in the event that the lands or any part thereof are sold or otherwise alienated by the town of Olathe on or before January 1, 1994, except as a consequence of a judgment at law or equity to recover sums owed by the town pursuant to a mortgage, sale to trustee, or similar agreement entered into by the town in order to secure funds for public purposes, directly related to repair, maintenance, or modernization of the reservoirs, water supply pipelines, or waterworks system of the town, the proceeds of such sale (excluding the value of any improvements made by the town) or the fair market value of the lands or part thereof (excluding the value of any improvements made by the town) at the time of such sale or alienation, whichever amount is greater, shall be paid to the United States by the town.".

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II

98th CONGRESS
1st Session

H. R. 1191

IN THE SENATE OF THE UNITED STATES

May 18 (legislative day, May 16), 1983

Received; read twice and referred to the Committee on Energy and Natural Resources

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AN ACT

To amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of chapter 104 of the Sixty-fifth Congress, session III (Public Law 332, 40 Stat. 1317), entitled "An Act to grant certain lands to the town of Olathe, Colorado, for the protection of its water supply," ("the Act") is hereby amended as follows:

(1) By the deletion from lines 9, 10, and 11 of the Act of the words "to have and to hold said lands for the purpose of the protection of the reservoirs and water supply pipelines and waterworks system of said town";

(2) By the deletion from lines 22, 23, and 24 of the Act of the words "*And provided further,* That title to the land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purposes herein provided"; and

(3) By the addition at the end of the Act of the following: "*And provided further,* That in the event that the lands or any part thereof are sold or otherwise alienated by said town of Olathe on or before January 1, 1994 (except as a consequence of a judgment at law or equity to recover sums owed by said town pursuant to a mortgage, sale to trustee, or similar agreement entered into by said town in order to secure funds for public purposes, directly related to repair, maintenance, or modernization of the reservoirs, water supply pipelines, or waterworks system of said town), the proceeds of such sale (excluding the value of any improvements made by the town) or the fair market value of the lands or part thereof (excluding the value of any improvements made by the town) at the time of such sale or alienation, whichever amount is greater, shall be paid to the United States by said town.".

Passed the House of Representatives May 17, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

II

98TH CONGRESS
1ST SESSION

S. 1860

To clear title to certain lands along the California-Nevada boundary.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 19), 1983

Mr. LAXALT (for himself, Mr. HECHT, Mr. CRANSTON, and Mr. WILSON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To clear title to certain lands along the California-Nevada boundary.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That the Congress finds that—

(1) thousands of acres of real property transferred by the United States to California or to Nevada on or before July 7, 1980, are now located within the other State according to the boundary between them established by the United States Supreme Court in the case of California against Nevada (433 U.S. 918 (1980));

(2) each State has accepted such transfers as valid, and commencing some one hundred and twenty-five years ago, conveyed substantially all of the property into private ownership;

(3) the original title of each State and political subdivision thereof and subsequent private parties has been treated as good and valid for all governmental and private purposes;

(4) it is imperative that certainty of title to and ownership of the real property be established as soon as practicable in order to avoid any undue hardship on the States of California and Nevada and affected private parties; and

(5) litigation is not an appropriate means of resolving the above questions of title and ownership of the affected real property in that it would result in unprecedented and unnecessary burdens and expenses on the courts of the United States, California, and Nevada, as well as on private property owners.

SEC. 2. Grants and all other transfers of all real property to California by the United States on or before July 7, 1980, by a statute, clear lists, selection, patent, or any other means, pursuant to any statute listed or referred to in section 4 of this Act, which real property is located in the State of Nevada according to the boundary between California and

Nevada, as defined in the case of California against Nevada (433 U.S. 918 (1980)), are hereby confirmed, from and after the date of any such grants or other transfers, as having been made properly.

SEC. 3. Grants and all other transfers of all real property to Nevada by the United States on or before July 7, 1980, by a statute, clear list, selection, patent, or any other means, pursuant to any statute listed or referred to in section 4 of this Act, which real property is located in the State of California according to the boundary between California and Nevada, as defined in the case of California against Nevada (433 U.S. 918 (1980)), are hereby confirmed, from and after the date of any such grants or other transfers, as having been made properly.

SEC. 4. Statutes of the United States pursuant to which real property has been granted or otherwise transferred by the United States to one or both of California and Nevada include the Acts of Congress approved September 4, 1841 (5 Stat. 453); September 28, 1850 (9 Stat. 519); March 3, 1853 (10 Stat. 244); July 2, 1862 (12 Stat. 503); March 21, 1864 (13 Stat. 30); July 4, 1866 (14 Stat. 85); March 2, 1867 (14 Stat. 541); June 16, 1880 (21 Stat. 287); August 18, 1894 (28 Stat. 422); and any other Act of Congress pursuant to which such a grant or other transfer was made.

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II

98TH CONGRESS
1ST SESSION

S. 1688

To amend the Act of October 18, 1972, to modify the authorization of appropriations for Sitka National Park, Alaska, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 25), 1983

Mr. MURKOWSKI (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To amend the Act of October 18, 1972, to modify the authorization of appropriations for Sitka National Park, Alaska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3 of the Act entitled, "An Act to authorize certain additions to the Sitka National Monument in the State of Alaska, and for other purposes," approved October 8, 1972 (86 Stat. 904), as amended by section 101, paragraph (23), of the Act of November 10, 1978 (92 Stat. 3472) is further amended by striking out "1,571,000" and inserting in lieu thereof "such sums as may be necessary, but not to exceed $6,000,000.".

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II

98TH CONGRESS
1ST SESSION

S. 1705

To modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 28 (legislative day, JULY 25), 1983

Mr. MOYNIHAN (for himself and Mr. D'AMATO) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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A BILL

To modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fire Island National Seashore Amendments Act of 1983".

SEC. 2. Section 2 of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e-1), is amended by adding at the end the following new subsections:

"(h)(1)(A) The Secretary shall sell any property described in subparagraph (B) of this paragraph acquired by condemnation under this Act—

"(i) to the highest bidder;

"(ii) at not less than the fair market value; and

"(iii) subject to covenants or other restrictions that will ensure that the use of such property conforms to the standards specified in regulations issued under section 3(a) of this Act which are in effect at the time of such sale and to any approved zoning ordinance or amendment thereof to which such property is subject.

"(B) The property referred to in subparagraph (A) of this paragraph is any property within the boundaries of the national seashore as delineated on the map mentioned in section 1 except—

"(i) property within the Dune district referred to in subsection (g) of this section;

"(ii) beach or waters and adjoining land within the exempt communities referred to in the first sentence of subsection (e) of this section; and

"(iii) property within the eight-mile area described in the second sentence of subsection (e) of this section; and "(iv) any property acquired prior to October 1, 1982, that the Secretary determines should be retained to further the purposes of this Act.

"(2) Notwithstanding any other provision of law, all moneys received from sales under paragraph (1) of this subsection may be retained and shall be available to the Secretary, without further appropriation, only for purposes of acquiring property under this Act.

"(i)(1) Upon or after the commencement of any action for condemnation with respect to any property under this Act, the Secretary, through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prevent any use of, or construction upon, such property that—

"(A) fails, or would result in a failure of such property, to conform to the standards specified in regulations issued under section 3(a) of this Act in effect at the time such use or construction began; or

"(B) in the case of undeveloped tracts in the Dune district referred to in subsection (g) of this section, would result in such undeveloped property not being maintained in its natural state.

"(2) Any temporary restraining order or injunction issued pursuant to such an application shall terminate on the date the United States acquires title to such property or, if such proceedings are terminated without the United States acquiring title to such property, on the date of such termination.".

SEC. 3. Section 3(e) of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e-2(e)), is amended to read as follows:

"(e) If any property, including improved property but excluding undeveloped property in the Dune district referred to in section 2(g) of this Act, with respect to which the Secretary's authority to acquire by condemnation has been suspended under this Act—

"(1) is, after the date of the enactment of the Fire Island National Seashore Amendments Act of 1983, made the subject of a variance under, or becomes for any reason an exception to, any applicable zoning ordinance approved under this section; and

"(2) such variance or exception results, or will result, in such property being used in a manner that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time such variance or exception took effect;

then the suspension of the Secretary's authority to acquire such property by condemnation shall automatically cease.".

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Senator **Wallop**. I will have to leave the hearing shortly after 11 o'clock. I would ask the witnesses to summarize their testimony to 5 minutes, and perhaps we can make it. The out of town witnesses will be heard first.

Let us hear first from my colleague and friend from New York, Mr. Moynihan.

Senator **Moynihan**. Thank you.

Senator **Wallop**. Senator Moynihan.

STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator **Moynihan**. Thank you, Mr. Chairman.

I'm here on two matters that I think will find favor with the committee. I can be brief about both, and will be.

The first is with respect to the Fire Island National Seashore. I have a statement which I will ask to be placed in the record later. The seashore was established 18 years ago and is one of the joys of New York, one of the very few national properties of its kind in our State.

In 1980, Senator Javits, who was one of the original forces behind the bill, and I asked the General Accounting Office to review the Park Services Land Act and the management practices and policies because there were a couple of problems in the bill. I can describe the most important ones.

Now, there are a number of incorporated towns on the island. Ocean Village or Ocean Beach is one. The actual unincorporated areas were from the larger towns. These towns give zoning variances to property owners. This can be like extending a porch by 2 feet.

Under the present legislation this requires the Park Service, once the variation is granted, the Park Service is informed, that is, they inform the landowner, the property owner, that their property is now subject to condemnation. This legislation allows them to do so and this gives them the options to prevent any changes that they don't like without having everybody always talking about condemning their property when they have no intention of doing that.

Second, over time, and we have been there for about 18 years, the Park Service has acquired a fair amount of land which doesn't have any real Park Service purpose. It would like to get rid of this to those that have a desire for it.

Finally, the amendment which Senator D'Amato and I had introduced jointly would permit the Park Service to direct, that is, to ask, the courts to halt illegal development work pending condemnation. When they say that something is wrong and condemnation proceedings are likely, in effect, they could get an injunction. The Park Service wants this and the overwhelming portion of the community wants this and we would hope that this committee might approve it.

Senator **Wallop**. I might say that I approve of this, too, because it has precedential value for some things which I think are clearly in the national benefit. There are some areas and places in the country besides Fire Island where I have been trying to get that same kind of concept developed. There seems to be something almost theological about a park possession. It doesn't serve the National Park purpose particularly well, and it certainly doesn't serve the overall effort to achieve quality in these areas.

Senator MOYNIHAN. The parks are so well managed and it is clear that we have people that know how to run a park, and they should be given some management options.

Senator WALLOP. I couldn't agree more.

Senator MOYNIHAN. I have another matter.

Senator WALLOP. Yes.

Senator MOYNIHAN. The other matter is the statement, or that I have a resolution that is before this committee to establish a commission on the Eleanor Roosevelt Centennial. It involves public lands because of the commemorations that would occur like Val-Kill and other places and the Park Service of the Department of the Interior would make some minor additional improvements to the Eleanor Roosevelt historic site to improve visitor access. We would then much appreciate it if the resolution could be reported from the committee. I leave that to your judgment.

Senator WALLOP. I think that we can accommodate that.

I might say, in regards to Fire Island, there are some things that have to be worked out between the towns and the landowners. In concept, I really have no problem with it. I very much support it.

Senator MOYNIHAN. Could I, Mr. Chairman, now turn to another subject?

Senator WALLOP. Go ahead, Senator.

Senator MOYNIHAN. I happened, for the first time in my life, to be in Nags Head last weekend and saw the Wright Brothers Memorial Park. I would like to say it is really magnificent. I have not seen anything as well done anywhere.

There are two things that I would like to suggest, however. It is that the monument at the top of Kill Devil Hill there, well, this is an extraordinary piece of architecture. There is not the slightest indication of who the architect was. We don't do many things as well as this.

Second, in the very back of the monument, facing in the opposite direction, there is a set of bronze doors done in a very fine art decor and in the style of the period. Somebody is not paying attention to them. They have got holes in them. There used to be a lock. If I could ask the very distinguished staff director to tell those people that, first of all, they have got a wonderful park, and, second, go around and look at the back of the monument to see if they can't look after those doors. They are superb. Also a little note about the architect would be part of the history for the Park Service.

Senator WALLOP. With the Director of the National Park Service in the audience, we could have that request registered. We will look into this.

Senator MOYNIHAN. Thank you, Mr. Chairman.

[The prepared statements of Senator Moynihan follow:]

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN
AT A HEARING ON
THE FIRE ISLAND NATIONAL SEASHORE AMENDMENTS ACT OF 1983 (S. 1705)

Subcommittee on Public Lands and Reserved Water
Committee on Energy and Natural Resources
October 6, 1983

Mr. Chairman,

It is a great pleasure to testify this morning on S. 1705, a bill to modify certain Federal land acquisition and disposal policies carried out with respect to the Fire Island National Seashore. I understand that you are considering several bills today, so I will keep my remarks brief and to the point.

On July 28, 1983, I introduced S. 1705 with my distinguished colleague Senator D'Amato. Congressman Thomas Downey introduced a companion bill, H.R. 3967, in the House of Representatives. The intent of the bill is to perfect provisions of the Fire Island National Seashore Act of 1964 (Public Law 88-587).

The Fire Island National Seashore was established by Congress nearly twenty years ago for the purpose of conserving and preserving for the use of future generations certain relatively unspoiled and undeveloped beaches, dunes, and other natural features within Suffolk County, New York. Fire Island possesses high value to the Nation as an unspoiled area of great natural beauty in close proximity to large concentrations of urban population. Fire Island, just fifty miles from New York City, provides respite and recreation for millions of people.

The 1964 Act included 17 communities within the boundaries of the National Seashore. In order to maintain the character of these communities and insure protection of the surrounding park areas, an enforcement mechanism was included in the law. The law provided that local zoning codes were to be drafted in conformance with criteria developed by the Secretary of the Interior and were subject to his approval. The Secreatry was also granted condemnation authority to be used to acquire property that was proposed to be developed in a manner not in conformance with local zoning ordinance.

Over the years, violations of zoning have resulted in Park Service acquisition and retention of property within the Seashore's developed communities. Some property that was acquired was unsuitable for park purposes.

In 1980, I joined Senator Jacob Javits, one of the prime sponsors of the legislation that created the Seashore, in requesting that the General Accounting Office (GAO) review the National Park Service's land acquisition and management policies and practices for the Fire Island National Seashore. The GAO report (CED 81-78) issued on May 8, 1981, contains several recommendations concerning ways to improve land acquisition and management at the Seashore.

S. 1705 is legislative response to several of the GAO findings and recommendations. To avoid further acquisition of unneeded land, we propose that the Secretary acquire and resell, with protective covenants, property acquired for violation of zoning ordinances. Revenues from these sales would be retained in a fund from which future enforcement acquisitions would be financed. In addition, Seashore officials would inventory its present holdings and dispose of properties previously acquired for enforcement purposes

-- and deemed not suitable for park purposes.

The GAO also recommended a change in procedures for addressing the issuance of variances or exceptions to local zoning. Currently, the National Park Service is required to issue a notification to the owner that his or her property is subject to condemnation once a variance has been granted. S. 1705 will make it clear that a variance is not, in and if itself, cause for condemnation. Only a variance or exception which results in the property being used in a manner that is inconsistent with the purposes of the Seashore Act will be subject to condemnation. The Secretary's guidelines will be used to determine whether or not the variance would produce a detrimental result.

Additionally, the bill would allow the Secretary to apply for an injunction or temporary restraining order to prevent any use of, or construction upon, property after the commencement of a condemnation action taken pursuant to the Seashore Act.

Mr. Chairman, on January 18, 1983, the management of the Fire Island National Seashore presented a draft land protection plan for public review and comment. This plan makes clear National Park Services intent with regard to its land management policies and practices within the Seashore. S. 1705 is consistent with the management objectives contained in the draft land protection plan, and it provides the administrative flexibility required to allow the Park Service to fulfill its duty of resource protection in an efficient and expeditious manner. I might add that favorable consideration of S. 1705 is necessary to alleviate some very real concerns being expressed by Fire Island landowners about current land acquisition policies for the Seashore.

Mr. Chairman, thank you for the opportunity to testify this morning.

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN AT A HEARING ON S. J. RES 139,
TO ESTABLISH A COMMISSION ON THE ELEANOR ROOSEVELT CENTENNIAL
Subcommittee on Public Lands and Reserved Water
Committee on Energy and Natural Resources
October 6, 1983

Mr. Chairman, I shall be brief. On July 28, I introduced Senate Joint Resolution 139, to provide for a proper commemoration of the centennial of the birth of Eleanor Roosevelt. I was privileged to have as my cosponsors both my colleague from New York and our distinguished Majority Leader. I would ask that our statements on that day be included in your hearing record, along with the text of the resolution.

Needless to say, I have heard nothing but enthusiastic support for this proposal. Eleanor Roosevelt exemplified the best values of our country. By her actions, she redefined the role of our nation's First Lady. Through her compassion, she enhanced the image of the United States the world over.

My resolution is simple. It would establish a Commission to provide official recognition, advice and assistance to appropriate centennial commemorations. Staff assistance would be provided by the Eleanor Roosevelt Institute, a nonprofit organization chartered by the Congress in 1963. It also directs the Department of the Interior to make some minor additional improvements to the Eleanor Roosevelt National Historic Site to improve visitor access.

The companion resolution in the House of Representatives was reported by voice vote last week from the Committee on Interior and Insular Affairs. That committee made some technical amendments minor in nature but warranted nonetheless and I would recommend those amendments to you. They help clarify, for example, the Resolution's intent with respect to improvements to be carried out at Val-Kill. I understand the improvements are quite simple--restrooms and the like--and not extensive or expensive at all.

I respectfully urge the Subcommittee to approve the legislation so that planning for the centennial may begin soon. The centennial will be upon us in just a few days over one year.

Senator WALLOP. I will call, and ask the indulgence of the Director of the National Park Service, Mr. Dickenson, and the Deputy Director of the Bureau of Land Management, Mr. Vail, if they will be patient with us. We will hear the other witnesses first. The first will be the Honorable Brian McKay, the attorney general of the State of Nevada. We also have Mr. Leland H. Bray, representing El Capitan Mining Co., Mr. Charlie Doyle of Ada, Mich., and Ms. Carol Chambers, president of the Mid-Fire Island Preservation Association.

We will hear from Mr. McKay first.

STATEMENT OF HON. BRIAN McKAY, ATTORNEY GENERAL, STATE OF NEVADA

Mr. McKAY. Thank you, Mr. Chairman. For the record, my name is Brian McKay, attorney general, State of Nevada. I am here to submit my testimony on Senate bill S. 1860, which deals with clearing title on certain land along the California-Nevada boundary. I will be very brief.

Around the 1800's, the United States deeded certain property to the State of California and, subsequently, California deeded that property to basically private ownership primarily in the Lake Tahoe area.

As a result of land surveys, lawsuits, the most recent of which was *California* v. *Nevada*, decided by the U.S. Supreme Court in 1980, which adjusted the boundaries along the California-Nevada border, it has been determined that certain of those lands were deeded by Nevada to people and by California that were, in fact, located in other States.

While nobody has challenged or questioned the title of that property, the question does arise and could arise in the future as to whether the States, in fact, have the authority to have that land.

Therefore, this is remedial legislation, and I believe there is no objection I am aware of to this, so I urge the committee to take favorable action.

Senator WALLOP. I think that is an understandable request. I think, as far as I know, the administration supports it.

Mr. McKAY. Thank you.

Senator WALLOP. There is no particular problem that I am aware of. We will certainly be in touch with you.

Mr. McKAY. Thank you, Senator.

[Subsequent to the hearing Mr. McKay submitted the following:]

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
CARSON CITY 89710

BRIAN McKAY
ATTORNEY GENERAL

WILLIAM E. ISAEFF
CHIEF DEPUTY ATTORNEY GENERAL

October 19, 1983

The Honorable Malcom Wallop, Senator
SR 206 Russell Senate Building
Washington, D.C. 20510

Re: S.1860, Congressional confirmation of land titles near the California-Nevada border.

Dear Senator Wallop:

The United States Supreme Court in California v. Nevada, 447 U.S. 125 (1980) fixed the true boundary lines between the two states based upon two surveys funded by congressional appropriations in 1872 and 1892 since both states had acquiesced in those boundary lines from the time they were established. The Court declined however to expand the Special Master's reference to consider ownership and title questions that remained concerning borderlands.

> "Specifically, the United States has apparently confirmed or 'clear listed' to California and Nevada certain parcels that turn out to be on the 'wrong' side of the boundary between those two States." 447 U.S. at 133.

The Court left the process of quieting title to the borderland tracts for "litigation in other forums." Id.

We believe that S.1860 is the only fair, expeditious, and proper way to resolve the borderlands problems.

As background the Court noted that California and Nevada in 1863 commissioned a joint survey of their border which located what has been known as the Houghton-Ives line from the Oregon border south along the 120th meridian to a point in Lake Tahoe and then southeast for about 103 miles along the oblique line. Both California and Nevada adopted the Houghton-Ives line by statute.

In 1872 the Commissioner of the General Land Office recommended to Congress, which recommendation was followed, for a full federal survey of the eastern boundary of California. The Von Schmidt line resulted which was east of the Hougton-Ives line. Neither State adopted it by statute but it gained gradual acceptance.

Many of the land title problems which S.1860 addresses were the result of the gradual shift of the boundary caused by the acceptance of the Von Schmidt line.

Congress appropriated funds in 1892 for a new survey of the oblique line which line was adopted by both states and which has created further land title questions.

The underlying consideration is that for over one hundred years the transfers by the United States of land to either California or Nevada were accepted as valid and substantially all of the land has been conveyed to private parties with similar reliance.

We believe, based upon the significant congressional involvement in the creation of these clouds upon present titles, that Congress should exercise its power to confirm the validity of the transfers by the United States. There is precedent for S.1860 in the Act of April 9, 1972, 42nd Congress, Second Session, wherein Congress confirmed private titles derived from the United States through the State of Georgia.

While the acreages involved are in the thousands, we believe the principle would be the same if but a single acre were involved. Congress should be accountable to itself, and we trust it will.

Very truly yours,

BRIAN McKAY
Attorney General

BMc:HWS:lh

Senator **Wallop**. Thank you, Mr. McKay.

We will next hear the statement of Charlie Doyle from Ada, Mich. Is Mr. Doyle here?

Mr. **Doyle**. Yes, Senator.

Senator **Wallop**. Proceed, Mr. Doyle.

STATEMENT OF CHARLIE DOYLE, ADA, MICH.

Mr. **Doyle**. Thank you, Mr. Chairman. I am Charlie Doyle from Ada, Mich. This is with a personal plea for S. 1868. This is for the authorized ceiling increase. I am the owner of the largest individual piece of property that would be acquired under this new legislation. As the owner, I have been placed in a very difficult situation in the past 4 years. Last November, the President signed legislation authorizing the acquisition of this property which finally resolved the matter. Now there is not enough money to make the acquisition. There is pending before you this $2 million ceiling increase. I understand that there is no opposition to this. I attempted to garner support from the administration. I wrote to President Reagan and I received back a letter indicating that the Interior Department and the President both supported the acquisition and they would make this known to the Senate. Therefore, I feel that there is no objection to this, as far as I can see, from the administration.

It is very vitally important to me that this issue be settled. It has been 4 years since I bought this property and I spent a lot of money for the property, both to acquire it and develop it. Right after I bought the property for development, I was made aware of the Government's intention to acquire the property. It has been 4 years since this time and we still don't have a resolution to it.

Now, I have been paying interest on the money that I had borrowed to buy the property and to develop it. The land is idle. When I was informed 2 years ago that it wasn't going to be bought, I had to redo all the work again and the survey work, the engineering work. Right after this got done, I found out for the second time that I was again informed that it was going to be acquired by the Government.

For this reason, I ask for your support of the ceiling increase. It is vitally important to me and to the other property owners. I ask you for your support of this ceiling increase.

Thank you, Mr. Chairman.

Senator **Wallop**. Mr. Doyle, I might say that you are just one part of what I consider to be a national scandal. I do understand your problem and will certainly try to accommodate it. There is now a multibillion-dollar backlog of authorized park acquisitions in this country for which Congress appears to have no stomach. We have done the worst of all things in a nation of laws and free people. That is to simply execute an effective taking of this. But it isn't even that, as you have just described, well, you just described what it is. You have to pay the taxes, the interest, and you are not permitted to develop it. You can't sell it to anybody else because they can't either. You are not alone in that boat. I very much sympathize with the problem you have.

Mr. **Doyle**. Thank you.

Senator WALLOP. We will see what can be done. My own feeling is that we have gone very much far enough with this whole process without adding anything to it until we can clean up this backlog.

Mr. DOYLE. I have made one request of our Government in the last 4 years. Either buy my land or let me sell it, Senator.

Senator WALLOP. Yes.

Mr. DOYLE. So far I have not been able to do either one of those.

Senator WALLOP. You are not alone. I deplore this. I have been working on this ever since I have been on this committee. I just think it is a disgrace. It is all over the country. It is not only in your area. People are simply being forced to do the worst. They have the obligation of taxes and other things that go with it. I sympathize with you. We'll do what we can.

Mr. DOYLE. Thank you very much, Mr. Chairman.

Senator WALLOP. Ms. Chambers, please present your statement at this time.

Ms. CHAMBERS. Yes, Senator.

STATEMENT OF CAROLE CHAMBERS, PRESIDENT, MID-FIRE ISLAND PRESERVATION ASSOCIATION, NEW YORK, N.Y.

Ms. CHAMBERS. Thank you, Mr. Chairman.

I am Carole Chambers, president, Mid-Fire Island Preservation Association. It is a great privilege to be here before you today.

Due to the time, I would just like to talk to you about my concerns on S. 1705 and submit a written statement later to the committee.

Senator WALLOP. Yes.

Ms. CHAMBERS. This is at the present time controversial as to Fire Island. Our organization, among many, is in opposition to the bill as it is written. I would like also to say that I believe that if the Congress wants to, that the problems with the bill can be resolved. We have been working on and discussing those resolutions in the communities over the last several weeks. We do have several suggestions. Today I am only going to try to hit several broad and very general problems.

We have a big problem with the rolling fund. The problem is with the specific language. Without further appropriations we don't want to give up that formal oversight that the Appropriations Committee has on the annual hearings.

Second, I'd like to call your attention to the fact that section 6 of our legislation provides that the National Park Service may receive private donations of land or moneys for the purposes of the act. We are concerned that private organizations will be set up to raise money for acquisition without any oversight. I just think that section could be fixed.

I think that the Park Service could issue an injunction if someone violates this. The injunction might be for someone who violated the zoning ordinance. This might be a permanent injunction because there is no time limit on it when the title changes hands. We don't think that is necessary—well, we would like to—and if it takes approximately 3 months, we think that would be the appropriate process, that injunctive authority. If there is an extreme violation, say, somebody trying to convert something. If someone would try to rebuild a house and there is a technical variance on the house, that person could be prevented from using that property for a limited amount of time. We think a time limit is appropriate there.

Third, I was very glad and gratified to hear that Mr. Moynihan's comments, that is, to hear them. A lot of people on Fire Island are unsure as to the purpose of this bill. I think that you probably know the town of Brookhaven last year passed a local law in opposition to the bill. On September 20 of this year, they passed the identical local law again in opposition to this bill. There is confusion about the purposes of the bill.

Mr. Moynihan said that he wanted to address the criticisms that the GAO made in 1981. It may be that, in one way of looking at it, it does, but I would like to call your attention to the fact that on many occasions, they have changed the very Federal standards that GAO criticized. So far, no attempt has been made in the changing process. I am not entirely calling the Park Service on that. It is a matter of accomplishing certain things within a certain time frame. But this bill is designed to enforce the very zoning standards the Park Service intends to change. That, really, is a very serious thing. As Mr. Moynihan said, no distinction is made between the guy who goes out and tries to illegally establish a multifamily dwelling and the guy who gets the technical variance because his deck is 2 feet over the line. The Park Service currently requires on a priority basis, that is, having nothing to do with whether the guy is a major violator or not, or when they have money to spend, they then acquire 30 or 40 properties. They were all single-family dwellings in priority areas. It had nothing to do with major violators. There is no language in this law that will focus on the new authorities, and so forth as to those violators. Those are our major concerns, that this will increase the current Federal policy before we have the chance to change this.

There is another problem under section 2 of the law. The Park Service is entitled to condemn any property within the community or any of the 44-acre properties protected from condemnation. The towns and villages have zoning ordinances ready and the Park Service is now, as I understand it, that is, they want to submit this to the Secretary with exceptions where they do not conform to the current Federal standards which are supposed to be amended. We have a mess. It is very difficult to try to discuss this. I do intend to try to get all of this in writing for you. I think that you can now understand our concern. I think that Mr. Moynihan is really trying to address the problem. I don't think that this bill is going to do it in the present form.

Senator WALLOP. You may have heard me mention that there were some things that had to be worked out.

Ms. CHAMBERS. Yes.

Senator WALLOP. Tony has been aware of some of the problems. We very much look forward to your detailed statement.

Ms. CHAMBERS. Thank you.

Senator WALLOP. We will see if there isn't some means of reaching an accommodation for both sides. As I understood what Senator Moynihan's purpose was, that is, in the statement, it may, from listening to you, not be achieved, but I think that your purposes are approximately the same here.

Ms. CHAMBERS. Yes, sir.

Senator WALLOP. As long as that is the general level of effort, it will require some reasonableness and flexibility by the administration, then I think we can do it.

Ms. CHAMBERS. Yes, sir.

Senator WALLOP. We will look forward to having your comments.

Ms. CHAMBERS. Yes, Senator.

Senator WALLOP. We will look forward to your comments and those of others. As I said, the hearing record will be open for 2 weeks. We will see what we can do to see if we can't achieve the purpose you stated, which sounds as reasonable enough. Your feeling is that it doesn't quite accomplish this within standards set forth in the legislation. Is that more or less correct?

Ms. CHAMBERS. Yes, sir. I appreciate that. I'd like to take the opportunity, since Mr. Dickensen is here today, to say that I appreciate the efforts the Park Service has made to try to understand and address the problems. We feel that they are with us now on this. Thank you very much.

Senator WALLOP. There is nothing that makes legislation flow more smoothly than with everybody trying to get the same thing done. We will see what we can do to accommodate you. There is no real rush to judgment on this. There is time to get it done appropriately.

Ms. CHAMBERS. Yes, sir.

Senator WALLOP. You don't have to go home and think that the world is going to collapse in the morning. In the morning we will all be off to various places anyway.

Ms. CHAMBERS. Thank you so much.

[The prepared statement of Ms. Chambers follows:]

STATEMENT OF CAROLE CHAMBERS, PRESIDENT, MID-FIRE ISLAND PRESERVATION ASSOCIATION, NEW YORK, N.Y.

Mr. Chairman, my name is Carole Chambers. I am President of Mid-Fire Island Preservation Association, a homeowners association on Fire Island. We wish to express our opposition to S-1705 and to call your attention to our concerns regarding the bill.

We think S-1705 contains two major national precedents of law, the "roll-over fund" for acquisition, and the "injunctive authority" clause. Comparatively few people on Fire Island are aware of the existence of the bill. Those of us who do know of it are worried about the purposes and consequences of it. Due to the short notice of the October 6the hearing before this committee, I was the only person able to come to Washington to speak on the issue. We think this proposal is serious enough to merit more examination. We therefore recommend that this committee delay passage of the bill in the U.S. Senate until field hearings are held before the public. That way those directly affected, as well as those who would be affected by subsequent legislation,would have the opportunity to examine and understand the impact of the bill. This would also give time to try to iron out any problems the bill might present and in our opinion, there are quite a few.

Our primary concerns and recommendations are as follows:

I. Section 2(h)(1)(A-B). The "Sell-back Clause".

We recommend that this proposal be ammended to permit the National Park Service to hold properties it acquires in future for a maximum of two years. We think such a limit is proper to insure that National Park Service turns the property back to private ownership in a timely fashion so as to avoid the appearance of speculating in real estate for profit.

II. Section s(h)(2). The "rollover fund".

II. This section provides that monies from the sale of unneeded properties by NPS could be used for acquisition purposes "without further appropriations" by Congress.

We understand the language to mean specifically that this fund would not be required to undergo the annual scrutiny by the public before our Congressional appropriations committees, in order to continue its operation.

It is the proposed elimination of this procedure to which we are deeply opposed. Public and Congressional scrutiny of funds expended by agencies is fundamental to our nation's system of checks and balances. The annual appropriations hearings provide the only arena where the private citizen's right to participate in making agency policy decisions is protected by law. In our case, where acquisition funds are the issue, all other Congressional and agency interaction is conducted in secret. Specifically, an individual person does not have access or input into the procedure for a declaration of taking. Surely, as citizens of the United States, we must continue to have annual appropriations hearings regarding the real expenditures effected by the agency, and we must be able to participate in those hearings.

I call your attention to the fact that Section 6 of our enabling legislation provides that NPS may receive private donations of property or money to further the purposes of the act. This provision,coupled with the proposed legislation, raises the possibility that new or existing non-profit organizations could financially support the "roll over fund" and exercise a considerable influence over acquisition policies on Fire Island. The private citizen, and in this case, property owner and taxpayer, would have no input or influence, because his only arena would have been removed.

In our view, the removal of public hearings on the use of such a fund with or without private monies, would present the potential for great mischief. We note that the proponents of this bill have not indicated a reasoning for the inclusion of the phrase, "without further appropriations". That phrase certainly has nothing to do with the U.S. General Accounting Office's report on Park Service's management and acquisition practices on Fire Island and it has nothing to do with focusing condemnation efforts on major violators of zoning laws. Why should the Congress and the public be eliminated from the reviewing and planning process of a new acquisition fund? What is the need for this; what does it accomplish?

In sum, we believe that:

A. the phrase, "without further appropriations" serves no legitimate, useful function.

B. it is a radical concept; it would seriously erode our Constitutional system of Congressional oversight of agency expenditures.

C. there is real potential in this concept for mismanagement and abuse. Given the fact that we are talking about land acquisition, we think that special care should be taken to assure that the exchange of property is necessary and appropriate. This proposal would strip away the Congress and the citizen's most effective safe-guard and means of oversight.

We recommend that legislation of this proposal be delayed until field hearings can be held on the subject. We especially recommend the deletion of the phrase "without further appropriations" from this section.

II. The Injunctive Authority Clause. Section 2i (1-2).

The proponents of this ammendment have stated that the purpose of it is to address the United Stated States General Accounting Office criticisms of NPS management and acquisition policies in a way that would relieve the small homeowner who seeks a minor variance to improve his single family dwelling, and focus punishment on those who are effecting illegal conversions of single family dwellings into multi-family dwellings.

We would support that purpose, but we do not agree that the language of this ammendment will achieve it.

The National Park Service Has never acquired a multi-family dwelling on Fire Island. It's priority acquisition system mandates that it use its monies to acquire in Seashore District, the wetlands and in the dune district. Nothing in this legislation suggests that NPS change these priorities. We do not see a change of focus in this legislation.

Further, the way it is written, the language will in fact enforce the current federal standards which GAO severely criticized. Recently, NPS released a draft Land Protection Plan promising to ammend those standards. In addition, I enclose a copy of a letter to GAO from Donald Paul Hodel, then Undersecretary of Interior, as further evidence of Interior's intention. However, to date, the ammendment procedures have not begun. We are concerned that the passage of this ammendment at this time would be viewed by the NPS as a signal from the Congress to enforce the current standards rather than ammend them.

The towns have passed new zoning ordinances which must be approved by the Secretary of Interior in order for home owners to conform to Section 2(e) of the federal law and be exempted from condemnation under that section.

On June 16, 1981, at the final hearing for the Brookhaven zoning ordinance, the NPS Superintendent promised before the public that the new ordinance would be approved. To date, neither Brookhaven's nor the other three ordinances have been approved.

Our organization has urged NPS to forward the local zoning ordinances to the Secretary for his approval along with drafted ammendments to the Federal Standards.

In reaction to opposition to S-1705 on the grounds that the zoning ordinances have not been approved, the proponents of this bill have brought pressure on NPS to forward the ordinances for approval.

Now, NPS proposes to approve the ordinances with exceptions where they do not conform to the Federal Standards. (These are the current, 1980 Final Rule, Federal Zoning Standards, which GAO criticized and which the National Park Service promises to ammend.)

We are faced with a situation where the passage of S-1705 will:

A. Enforce the current federal standards (which are supposed to be ammended.)
B. Raise a question as to whether or not any resident of Fire Island is eligible for an exemption from condemnation.

In our opinion, the current Federal Standards are so severe, that no home owner on Fire Island can conform to them. No distinction is made in these Standards between the person who seeks, for example, a 2' setback variance to build a deck, and a person who willfully converts his house to a multi-family dwelling without bothering to seek a permit from the local authorities. Under the current standards, each is considered in violation and subject to condemnation. While the Federal law permits NPS to condemn any variance, it does not require NPS to do so.

Due to constant changing of zoning laws, probably 80 percent of Fire Island homes rest on non-conforming lots. If they were to go down by fire or storm, they would require a variance to rebuild. Under the current Federal Standards, the NPS could condemn them.

Senator Moynihan stated in this hearing that it was his desire that this bill should address this problem. So far as we can see, nothing in the language will make any distinctions between the major and minor variance. Certainly there is no language which would focus punishment on illegal conversions to multifamily dwellings. Rather, S-1705 is designed to enforce the current Standards. Furthermore, even if the Standards are ammended, S-1705 would permit NPS to punish previous violations of the current Standards at some future date, after new Standards are in force.

We are especially concerned about the nature of the punishment called for in this section. We understand the language to mean that any injunction issued pursuant to NPS application would terminate when title of the land changed hands, that is, it became the property of the U.S. Government.

Practically speaking, the way it would work would be: NPS would begin condemnation, then seek an injunction to halt use or construction on the property. The injunction would terminate when NPS and the property owner agreed to a solution or when the USA acquired title to the property. The problem with this is that condemnation proceedings can take 30 years or more to complete. In the case of a vacant lot in the Dune District, or a house that burned down on an undersized lot in any district, this language could, and, in our opinion, would be used to deprive the owner of the right to use his land without compensating him for the loss. We believe such an action would violate the property owners Constitutional right to due process where a taking must occur. We think the injunctive authority clause ought to have a time limit of one year. The average declaration of taking on Fire Island has required three months. That would be ample time for NPS and the land owner to come to terms, or for NPS to acquire the land.

Another way to correct the problem would be to narrow the use of the injunction to apply only to those variances which would significently increase human density on a lot.
However it is done, we urge this committee to take the time to truly address the problem of preventing damage to the resource on Fire Island without violating the Constitutional rights of the property owners. We believe this can be done.

We remind you that an extensive report was issued regarding the "protection of the resource" on Fire Island in 1975. (A Report to the National Park Service on the Fire Island National Seashore, Babcock and Roddewig.) The essence of that report as it applies to this bill, is that all private property on Fire Island could be developed to the extent of single family dwellings with attendent supportive commercial structures without damaging the resource. The problem, Babcock said, that NPS and the citizens must face is the proliferation of multi-family dwellings which could turn into high rise coops and condominiums.

We believe that NPS ought to have tools to prevent such expansion but that the Congress must guard us against those tools being used to take away use of land without compensation.

The Towns, the citizens and, for the last few years, the NPS have made tremendous efforts to address these problems and I think that some recognition of these efforts ought to be made.

NPS has vowed to review and modify its zoning Standards, it's priority acquisition system, and if necessary its Master Plan in order to halt its abuses to homeowners and focus its attention on a real plan for resource protection through cooperation with citizens groups and the Towns.

If this legislation is passed in its current state, we believe it will destroy these efforts and return us to the atmosphere and chaos of 1978.

We recommend that you delay passage of this ammendment until field hearings are held on the subject.

We recommend that,if the Congress wishes to grant NPS injunctive authority to halt use or construction on property on Fire Island,

A. that authority should be addressed to section three of the law, with specific regard to zoning violations rather than Section 2.

B. that authority ought to be limited in scope to apply only to variances which increase human density significantly.

C. that authority ought not apply to vacant lands in or out of the dune district unless a one year time limit is placed upon it.

D. this legislation ought not take place until the Federal zoning Standards are ammended or at least the procedures for ammending them have begun.

E. this legislation ought not take place until the new zoning ordinances are approved by the Secretary of Interior or at least, it is clear to those affected that they will be approved without the requirement that they conform to Federal Standards which are in the process of being ammended.

III. Proposed revisions to section 3(e).

We would suggest that this entire section be rewritten to focus condemnation on variances which would increase human density, rather than all variances. This would be in keeping with GAO criticisms and our understanding of NPS current intentions, and I believe it would accomplish Mr. Moynihan's stated goal of S-1705.

Additionally, the currently proposed language changes in Section 3(e) would enforce the current Federal Standards which are supposed to be ammended. As the Federal law, the Federal Standards, and the local ordinances stand, and with or without the proposed ammendments of S-1705, it is and would be impossible for a large majority of homeowners on Fire Island to undertake minor or major construction without a variance of some kind from the local authorities and a variance to the Federal Standards. It is this problem that is key to the issues and that we believe should be the concern of the Congress in enacting any further legislation regarding Fire Island.

Beyond this statement, there is much that ought to be said regarding nuance and minor problems of language in S-1705. We urge this committee to be aware of the general complexity of the Fire Island issues due to the interfacing of Federal law, the Federal Standards and local zoning ordinances. It is our hope that you will, in turn, agree that this proposal is major and deserves more study as well as hearings for the people it would affect. Thank you.

Carole Chambers

In reply, refer to: Carole Chambers, President
Mid-Fire Island Preservation Association
221 East 78th St.
New York, N.Y. 10021

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 20 1981

Honorable Milton J. Socolar
Acting Comptroller General
General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548
Director

Dear Mr. Socolar:

As required by the Legislative Reorganization Act of 1970, we are submitting a written statement on actions taken on the General Accounting Office's recommendations contained in the report entitled "The National Park Service Should Improve Its Land Acquisition and Management at the Fire Island National Seashore", CED 81-78, dated May 8, 1981.

There is one general action being taken at this time that most likely will have a bearing on the Fire Island land acquisition program. That action is the development of new guidelines for protecting and acquiring interests in land within the National Park System and other conservation units under the Department of the Interior. The goal of the new guidelines is to lessen the magnitude and the impact of Federal land acquisition. Further, the possibility of selling or leasing lands (with appropriate restrictions) is being considered in conjunction with proper management. We intend to insure that these new policies will be consistent with existing law, and we look forward to working with you and other Members of Congress on these matters. Within this framework, we offer more specific comments on the five recommendations made by the General Accounting Office (GAO).

The first two GAO recommendations to the Secretary are related and are repeated here.

> Revise the Fire Island zoning standards to make it clear that homes rebuilt or improved in accordance with approved variances to local zoning ordinances will not be subject to condemnation unless the variances adversely affect Fire Island's natural resources.

> Stop routinely objecting to variances, unless the Park Service specifically shows why the variances would harm Fire Island's natural resources, and revise the zoning standards accordingly.

Three of the four zoning entities on Fire Island have revised their ordinance using standards issued by the Secretary as published in the Federal Register on September 10, 1980. It is anticipated that the other town will enact a revised ordinance within a month. Soon thereafter, the four ordinances will be submitted to the Secretary for approval. The zoning action by the communities represents the culmination of a prolonged effort by many local citizens, the local governments, and the National Park Service. Therefore any revisions should be carefully structured in order to build upon this spirit of cooperation.

There is general agreement within the Department and the Service that we need a different approach in dealing with variances. The procedures for dealing with the variety of property types and the variety of deviations that may be requested have not been determined, but we are considering ways to reduce objections to minor variances.

Recommendation No. 3 requests the Department to explain specifically why variances would adversely affect Fire Island's natural resources when asking for declaration of taking authority. We concur in the recommendation, as stated in our response to the draft report, and we intend to comply in future requests.

The fourth recommendation asks that the land acquisition plan be revised. Actually, the Fire Island land acquisition plan has not been completed or approved. When completing the land acquisition plan, events that have occurred and comments that have been made since the preparation of the draft plan will be fully considered, including all of GAO's comments.

Recommendation No. 5 is that all acquired lands (that are compatible with the purposes of the seashore) in exempt communities be sold to the highest bidder with the former owners given the first opportunity to match the highest bid. Implementation of this recommendation would require amendatory legislation in order to offer previous owners the first opportunity to purchase if the United States has owned the property for more than two years. In addition, the General Management Plan would require revision. Nevertheless, the Department is studying a possible sellback program for application to Fire Island and other areas of the National Park System.

We trust this information will be helpful to you and we will cooperate fully if your committee desires to discuss the issues further. A similar letter is being sent to Honorable William V. Roth, Jr., Chairman, Committee on Governmental Affairs, United States Senate; Honorable Mark O. Hatfield, Chairman, Committee on Appropriations, United States Senate; Honorable Jamie L. Whitten, Chairman, Committee on Appropriations, House of Representatives; Honorable Jack Brooks, Chairman, Committee on Government Operations, House of Representatives; and Honorable David A. Stockman, Director, Office of Management and Budget.

Sincerely,

Donald Paul Hodel

UNDER SECRETARY

Senator **Wallop**. Mr. Bray, you may proceed at this time with your statement.

STATEMENT OF LELAND H. BRAY ON BEHALF OF EL CAPITAN MINING CO.

Mr. **Bray**. Mr. Chairman, thank you. I am here to speak on behalf of S. 1389. I am the attorney for the El Capitan Mining Co. I have submitted a written statement that I would like to have made part of the record.

Senator **Wallop**. Without objection, your full statement will be included in the record upon completion of your remarks.

Mr. **Bray**. If I could just give a few comments to outline this. As is indicated in the statement, this property is on the extreme west boundary of the Death Valley National Monument. Topographically and physically it is really more a part of the Saline Valley than it is of the Death Valley. Access through the property is through the Saline Valley which lies to the west. It is extremely rugged country. It is at an elevation of somewhat below 5,700 feet, being just west of Ubehebe Peak.

Now, that property was actually included in the monument as to the information available to me locally, and, as a result of the fact that when surveyors came along, this was very rugged country. It was extremely rugged. They took the path of least resistance. This was not because it had some significance to the Death Valley National Monument, but there are significant deposits of copper and molybdenum which have been proven by core drilling. There are indications of even larger deposits. Also, due to the moratorium that was placed on surface disturbance in the bill that is commonly called FLPMA, and I can't even say the full words, and I am sorry, but this was passed in 1976, and that interrupted exploration and the lost communication caused the claims to be lost. We did attempt administratively to have that remedied. We did get a lot of cooperation from the Department of the Interior. Finally, our efforts were not fruitful.

We merely would ask that full consideration be given to the passage of the bill. We are not aware of any actual environmental or ecologically sensitive areas that would be affected. If you have any questions I would try to answer them.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bray follows:]

Statement of

Leland H. Bray
Representing El Capitan Mining Company
on S. 1389

Subcommittee on Public Lands and Reserved Water
October 6, 1983

Mr. Chairman:

I am Lee Bray, attorney for El Capitan Mining Company. I appreciate this opportunity to appear before this Subcommittee in support of S. 1389.

The subject of this bill is an area on the extreme western edge of Death Valley monument in the area of Ubehebe Peak. Ubehebe Peak is 5,670 feet in elevation and the affected area lies on the slope facing Saline Valley and away from Death Valley. It is, in fact, not visible from Death Valley or any portion of the Monument area. This area was added to the Monument within the last decade as a result of a resurvey.

Prior to the passage of the Federal Land Policy Management Act in 1976, there was a substantial amount of exploration and core drilling resulting in 1.5 million tons of blocked out ore consisting of 1.3 per cent copper per ton, and .13 per cent molybdenum per ton.

Even in the currently depressed metals market the existing values are worthy of consideration. An upturn in the market to the levels of 1980-81 would make this property very attractive to further exploration and development. In 1976 when FLPMA was enacted MS&W Resources, a Canadian mining organization, was prepared to undertake further exploration and core drilling based on recommendations made by several geologists and engineering firms, including Bechtel.

FLMPA, as you know, placed a four year moratorium on any surface disturbance within the boundaries of Death Valley National Monument.

The prospector, a Mr. Garr Watts of Big Pine, California, held a reversionary interest from MS&W Resources. At the conclusion of the moratorium period, Mr. Watts attempted to contact MS&W's attorney, Eddie LeBaron of Las Vegas, Nevada, and was informed that Mr. LeBaron had left the practice of law to resume his football career as manager of the Atlanta Falcons. Mr. Watts then contacted El Capitan mining company to assist him in this matter and it was learned that an evaluation had been made by the Geological Section of the Department of the Interior which concluded that there was not ore of sufficient value to constitute a valid mining claim. Said evaluation was made without the benefit of any of the geological and core drilling information in possession of MS&W Resources due to a misinterpretation of the principals of MS&W as to their available remedies.

Application was made to the Department of the Interior in August of 1981 and despite extensive efforts by MS&W Resources and the staff at the Department of the Interior this matter could not be resolved administratively.

This bill merely seeks to transfer jurisdication of this remote area of the Monument from the National Park Service to the BLM in order to allow management of the mining claim consisting of an area of only a few square miles in accordance with the topographical and phyiscal structure which are more akin to Saline Valley presently under BLM jurisdication.

El Capitan mining company has been in business for over forty years and enjoys an excellent reputation in both California and Nevada.

While it is recognized that the current values of the metals known to exist on the claim are not of economic value that they enjoyed in recent years, past experience indicates that the economic values can be expected to at least reach the level of 1981-82 within the next 5 to 10 years. Development of the mine sufficiently to bring it into production would require at least that period of time. Production of those metals could have a definite positive affect on our national security in the event of any interruption of international trade.

Thank you for considering this measure and if any further information is required please so advise me and I will be pleased to assist you in any way I can.

Senator **Wallop**. I am informed that the committee has to wait and hear what the administration's position is and those of other groups. I can understand the reason for your being here and the reason for the bill having been introduced.

Mr. **Bray**. Thank you.

Senator **Wallop**. You are most welcome to stay and listen to the administration's position on it.

Mr. **Bray**. Yes; thank you.

Senator **Wallop**. You can then respond further to the committee if you wish.

Mr. **Bray**. Thank you, sir.

Senator **Wallop**. You may do that.

Mr. **Bray**. Yes, sir.

Senator **Wallop**. This is with regards to whatever such details they bring up.

Now, your entire statement has been put into the record, Mr. Bray.

Mr. **Bray**. Thank you.

Senator **Wallop**. We will see after the hearing today what confronts us. Thank you very much for coming.

Senator **Evans**. I have one question.

Senator **Wallop**. Senator Evans.

Senator **Evans**. You say in your statement that the area was added to the monument within the last decade as a result of a resurvey.

Mr. **Bray**. Yes.

Senator **Evans**. Is that your understanding that this is the only reason that area was added? It was not consciously added to the monument because of the nature of that area or the feeling that it should be part of the monument?

Mr. Bray. It is my understanding that the geologist was on the property at the time, I believe, 1971, perhaps 1972, and that the survey crews came through at the time when he was there. That is the basis on which I had made that statement and the statement that the country was so rough that they included it as a matter of convenience rather than as a matter of preservation of anything to do with the monument or intent to establish the monument. It is a typical thing of someone designating, an engineer designating something. You put a sign post in a certain place. The ground is a little rough. He then puts it 10 feet away.

Senator Evans. Perhaps we can find out from the administration. Typically monuments or national areas of that kind, I would think, would typically have their boundaries on the ridge lines or on some natural, or there would be some natural reason for the boundary to be there. It sounds, at least, from what you're saying that this is over the hill from Death Valley. We can find that out from the administration.

Thank you, Mr. Bray.

Senator Wallop. Thank you for your testimony. Your full statement is included.

Mr. Dickenson is next. He is the Director, National Park Service, Department of the Interior.

Mr. Dickenson. Thank you, Mr. Chairman.

Senator Wallop. Mr. Vail, Deputy Director, Land and Resources, Bureau of Land Management, Department of the Interior, will follow.

I would like to also say that there are a number of statements that we will be provided with here today and will insert into the record at the appropriate time. They are the statements of Senators Murkowski, D'Amato, Thurmond, as such. You may proceed, Mr. Dickenson.

Mr. Dickenson. Do you wish me to proceed in any particular order.

Senator Wallop. No; you may proceed as you wish, Mr. Dickenson.

STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Dickenson. Since the statement will be entered in full into the record, I will just summarize it. This is in the interest of your time and that of Senator Evans.

The first bill that I will comment on is Senate Joint Resolution 139, the Eleanor Roosevelt Centennial Commission.

The intent of this bill is to deal with the appointment of 10 designated officials, plus the surviving children, of Mrs. Eleanor Roosevelt. This is to commemorate the anniversary of her 100th birthday which is coming up in October 1984.

Mr. Chairman, we have a number of events that we are planning ourselves. Work is proceeding on the reconstruction of the home.

Our basic position that we offer for the committee is that we do not believe that, actually, the appointment of a commission is necessary, but if the subcommittee desires to proceed along those lines, there are a number of amendments and suggestions that we offer for the subcommittee's deliberation. I will not go into those at this time in any substance.

S. 1868 deals with the Sleeping Bear Dunes national lakeshore. The intent here is to increase the ceiling on the appropriations for land acquisition at Sleeping Bear from $66,153,000 to $84,149,558. That is an increase of $17,996,558.

Mr. Chairman, as we testified before the committee in April on H.R. 1213, we are requesting an increase of only $15,996,558. That is a difference of $2 million. The reason that we requested the $15.9 million was to cover the appropriations request which is in the President's budget. We cannot, therefore, support S. 1868 which authorizes the $2 million above that. In the last 2 fiscal years, 1983 and 1984, Congress has deleted from the President's budget request a total of $20.4 million for Sleeping Bear. That has occurred, I believe, at the initiation of the House. Nevertheless, for us to authorize $2 million over and above the President's budget seems inconsistent.

As to S. 1775, which is the Georgia O'Keeffe national historic site, this would repeal Section 3 of the 1980 act which brought this into the national park system of the United States. It is our understanding that Ms. O'Keeffe desires to have this removed from the national park system for her own reasons and that her letter to Senator Domenici has appeared in full within the Congressional Record. We are entirely understanding and are in support of this great lady's desire and wish to have this area removed from the system. We fully support that.

S. 1790 is on the Art Barn and Pierce Mill in Rock Creek Park. This bill would authorize the Secretary to enter into contracts or cooperative agreements with the Art Barn Association, which has, in fact, been operating the Art Barn and Pierce Mill in Rock Creek Park in the District of Columbia since the early 1970's, and doing so very, very successfully. The effect of this legislation would be to put the relationship on a continuing basis and would obviate the need for an annual advertisement to comply with existing procurement regulations.

We are entirely supportive of this approach, which has been used in a number of other instances in recent years with other associations where they perform a continuing service.

We do suggest that the subcommittee may desire to think about a sunset provision. This would give both the Congress and the executive branch a little more flexibility in dealing with this, and, perhaps reconsideration at the end of 5 or 10 years would be desirable.

S. 806 concerns the Cumberland Island national seashore, reimbursement for electrical facilities.

The purpose of this bill is to reimburse the Okefenokee Rural Electric Membership Corp. for certain investments made on Cumberland Island national seashore prior to the time that it was authorized by the Congress and subsequently passed into public ownership. They have not been able, apparently, to recoup these prior investments and desire to have some assistance.

From our standpoint, we believe this has merit as it relates to that part of the system that was installed to serve National Park Service needs. We have not had an opportunity to audit their books, as the actual legislation envisions, but we believe, based upon our observations of the existing lines and the cost involved, that only about $60,000 would be that portion applicable to the National Park Service operations on Cumberland Island. The bill visualizes a reimbursement of $338,000. We are not in a position to speak to that difference. The REA or the other authorities will have to deal with that. Indeed, the figure of $60,000 is purely an estimate. Nevertheless, we are pleased to support that particular portion because, through no fault of the REA, the investment was made and they were unable to recoup.

The purpose of S. 1389 is to transfer administration of certain lands in California and Nevada to the Bureau of Land Management.

This particular property is located on the extreme western side of the Death Valley National Monument right on the California border. It involves an area that was known as the Jarosite mining claim group of 38 unpatented claims.

The history of this area in past years is that there has been some mining but mostly prospecting. It has not been a real producer of anything.

From the standpoint of the National Park Service, it is prime big horn habitat. It is an extraordinary portion of the monument in terms of desert scenery. We are deeply concerned about the effect of this legislation which would, in fact, not revise the boundary, but would turn over this acreage within the existing monument to the Bureau of Land Management, thus subjecting it to the mining laws of 1872 and FLPMA. This would remove it from the effective administrative control and authority of the National Park Service. We believe that precedent needs to be considered by the subcommittee and rejected as a completely unacceptable approach.

In addition, I believe that the Bureau of Land Management State director has raised several objections, but BLM can testify for themselves. My understanding is that the area in question has been considered for wilderness, and that a wilderness study has been conducted.

To summarize, we strongly object to the legislation because of the effect it would have on this unit of the national park system.

S. 1688 is concerned with the Sitka National Historical Park. Now, this visualizes an increase in the development ceiling. Sitka is a national park and is in the southeastern part of Alaska. It was one of the areas of earlier Russian occupation and, as such, there are considerable cultural remains including the old Russian bishop's house. The cost of restoration of that important historical property certainly was more than anticipated at the outset a few years back. There are other proposed expenditures that would exceed the development ceiling. Actually, the development ceiling has been exceeded by a little over $1 million at the present time. We can support a ceiling increase in the amount to cover the funds already expended, which is our usual statement and usual practice. That increase would bring it up to $2,656,000 and still have the $6 million, which is proposed. We bring that to the committee's attention for their consideration.

S. 1705, Fire Island National Seashore is next. I believe that the chairman will understand that we have had this legislation before us for our review for only a short time. We would like to follow the suggestion that was made and give our substantive comments to the committee within a 2-week period.

Nevertheless, there are a couple of other comments that I would like to make at this time. There are some features to this which would enhance the National Park Service's land acquisition approach. We are particularly intrigued by the temporary restraining order feature as a way to short circuit the kind of development that can occur by the few individuals who desire to deliberately avoid the zoning and regulatory ordinances which are in effect. The time constraints are such that it is possible for any individuals, who do not wish to be cooperative, to move on to a piece of land, and develop that before we can get the land acquisition mechanisms in operation.

The temporary restraining order, the TRO, offers an opportunity not only at Fire Island, but maybe in other such places that really ought to be considered as being more economical and in everyone's interest.

If a landowner is desirous of really avoiding some of the zoning constraints, this will also give that landowner the opportunity to pull back and to try to bring the development into conformance with an acceptable development.

We do have some concerns regarding the turnaround provision. The proposed legislation calls for the sale of properties that are condemned and for the use of those receipts as a part of a revolving fund locally. We must say that some of this, or the ramifications of this, have not been completely thought through. Those of us in the executive branch need to come forward with our recommendation regarding this.

There are some other concerns that we have that we will express in a written statement.

I believe, Mr. Chairman, that completes my rundown. I would be glad to respond to any questions.

[The prepared statement of Mr. Dickenson follows:]

STATEMENT OF RUSSELL E. DICKENSON, DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING SEVERAL BILLS PERTAINING TO UNITS OF THE NATIONAL PARK SYSTEM.

OCTOBER 6, 1983

S.J. RES. 139--ELEANOR ROOSEVELT CENTENNIAL COMMISSION

THIS MEASURE WOULD ESTABLISH A COMMISSION CONSISTING OF 10 DESIGNATED OFFICIALS PLUS THE SURVIVING CHILDREN OF MRS. ELEANOR ROOSEVELT. THE COMMISSION WOULD ENCOURAGE AND RECOGNIZE OBSERVANCES OF THE 100TH ANNIVERSARY OF THE BIRTH OF ELEANOR ROOSEVELT, AND IT WOULD COORDINATE THE ACTIVITIES OF FEDERAL AGENCIES IN SUPPORT OF SUCH OBSERVANCES.

OCTOBER 11, 1984, WILL MARK THE 100th ANNIVERSARY OF ELEANOR ROOSEVELT'S BIRTH. ELEANOR ROOSEVELT WAS A GREAT AMERICAN, AND THE CENTENNIAL OF HER BIRTH IS A FITTING OCCASION TO REMEMBER HER HUMANITARIAN WORK.

THE NATIONAL PARK SERVICE ADMINISTERS VAL-KILL, THE FORMER HOME OF ELEANOR ROOSEVELT, AS THE ELEANOR ROOSEVELT NATIONAL HISTORIC SITE. THIS SITE, LOCATED NEAR HYDE PARK, NEW YORK, WAS AUTHORIZED TO BE ACQUIRED AND ADMINISTERED AS A UNIT OF THE NATIONAL PARK SYSTEM BY THE ACT OF MAY 26, 1977. ACQUISITION OF THE SITE WAS COMPLETED IN NOVEMBER 1979. THE GENERAL MANAGEMENT PLAN WAS APPROVED IN MAY 1980. WE ARE IN THE PROCESS OF BEGINNING RESTORATION OF THE SITE, AND IT WILL BE OPEN TO LIMITED VISITATION BY OCTOBER 11, 1984.

MR. CHAIRMAN, WE ARE WORKING WITH THE ELEANOR ROOSEVELT INSTITUTE TO DEVELOP AN APPROPRIATE CEREMONY AT VAL-KILL ON THE CENTENNIAL DAY, INCLUDING ISSUANCE OF

A COMMEMORATIVE STAMP AND DEDICATORY OBSERVANCES. WE BELIEVE THIS CEREMONY AND OBSERVANCES WILL PROVIDE VISIBILITY AND RECOGNITION OF THE EVENT. IN THESE CIRCUMSTANCES, WE BELIEVE A STATEMENT OF CONGRESSIONAL INTEREST MARKING THE CENTENNIAL OF ELEANOR ROOSEVELT'S BIRTH, TOGETHER WITH THE CEREMONIES AT VAL-KILL, WOULD BE ADEQUATE TO BRING THIS EVENT TO THE ATTENTION OF THE AMERICAN PEOPLE. ACCORDINGLY, WE BELIEVE AN OPERATING COMMISSION, SUCH AS IS PROPOSED IN THIS LEGISLATION IS UNNECESSARY.

IF, HOWEVER, THE CONGRESS WISHES TO ESTABLISH A COMMISSION FOR THIS PURPOSE, THE SPECIFIC LANGUAGE OF S.J. RES. 139 RAISES SEVERAL QUESTIONS THAT WE SUGGEST YOUR COMMITTEE CONSIDER:

1. WE QUESTION WHETHER THE COMMISSION WILL CONDUCT "EXECUTIVE" FUNCTIONS, AND WHETHER THE COMMISSIONERS WILL THEREFORE HOLD AN "OFFICE" WITHIN THE MEANING OF THE CONSTITUTION. IF SO, THE COMMISSIONERS WILL HAVE TO BE APPOINTED PURSUANT TO THE APPOINTMENTS CLAUSE OF THE CONSTITUTION. ADDITIONALLY, THE DEPARTMENT OF JUSTICE INFORMS US THAT MEMBERS OF CONGRESS COULD NOT BE APPOINTED UNDER THE INCOMPATIBILITY CLAUSE OF THE CONSTITUTION. THE DEPARTMENT OF JUSTICE IS REVIEWING THIS ISSUE AND WILL REPORT TO THE COMMITTEE IN THE NEAR FUTURE. TO AVOID CONFLICT, WE SUGGEST THE LEGISLATION MAY BE AMENDED SO THAT THE PRESIDENT WOULD APPOINT ALL THE COMMISSIONERS.

2. SUBSECTION 4(a) REQUIRES THE COMMISSION TO MEET NO LATER THAN 30 DAYS AFTER ENACTMENT OF THIS LEGISLATION AT A PLACE DETERMINED BY THE LIBRARIAN OF CONGRESS. IT MAY BE DIFFICULT TO ASSEMBLE ALL COMMISSION MEMBERS WITHIN THAT SHORT A TIME, ESPECIALLY IF NO PROVISION IS MADE FOR EX-OFFICIO MEMBERS TO DESIGNATE A REPRESENTATIVE TO ACT FOR THEM ON THE COMMISSION.

3. PARAGRAPH (2) OF SUBSECTION 4(e) APPEARS TO AUTHORIZE THE SECRETARY OF THE INTERIOR TO PAY THE PRIVATE MEMBERS' COMPENSATION OUT OF APPROPRIATIONS OTHERWISE AVAILABLE TO HIM. THE LANGUAGE OF THIS PARAGRAPH SHOULD BE AMENDED IF THAT IS THE INTENT. IN THIS CONNECTION THE USUAL PRACTICE IS TO PAY TRAVEL AND SUBSISTENCE RATHER THAN WAGES. WE COULD NOT SUPPORT PAYMENT OF COMPENSATION TO THE PRIVATE MEMBERS. COMPENSATION AT THE GS-18 RATE WOULD AMOUNT TO $220 PER DAY IN ADDITION TO TRAVEL.

4. NO PROVISION IS MADE FOR TERMINATION OF THE COMMISSION. WE SUGGEST JANUARY 1, 1985.

5. SUBSECTION 5(a) DIRECTS THE SECRETARY OF THE INTERIOR TO COMPLETE THE RENOVATION OF THE NATIONAL HISTORIC SITE IN FISCAL YEAR 1984, SUFFICIENTLY TO OPEN IT TO FULL PUBLIC VISITATION. WE RECOMMEND THAT THE ENTIRE SECTION BE DELETED.

WE CANNOT, IN VIEW OF THE BUDGETARY SITUATION AND THE EXISTING AUTHORIZATION CEILING FOR THE DEVELOPMENT OF THE SITE, ASSURE RENOVATION OF THE SITE FOR FULL PUBLIC VISITATION BY SEPTEMBER 30, 1984, AS DIRECTED IN THIS JOINT RESOLUTION. AS PREVIOUSLY STATED, HOWEVER, THE SITE WILL BE OPEN TO LIMITED VISITATION BY OCTOBER 11, 1984.

S. 1868--SLEEPING BEAR DUNES NATIONAL LAKESHORE

THIS BILL WOULD INCREASE THE CEILING ON APPROPRIATIONS FOR LAND ACQUISTIION AT SLEEPING BEAR DUNES NATIONAL LAKESHORE, MICHIGAN, FROM $66,153,000 TO $84,149,558, AN INCREASE OF $17,996,558. MR. CHAIRMAN, AS WE TESTIFIED BEFORE YOUR COMMITTEE IN APRIL ON H.R. 1213, WE ARE REQUESTING AN INCREASE OF ONLY $15,996,558, IN ORDER

TO COVER OUR APPROPRIATION REQUEST IN THE PRESIDENT'S BUDGET. WE WOULD SUPPORT, THEREFORE, A NEW CEILING FOR SLEEPING BEAR OF $82,149,558. WE CANNOT SUPPORT S. 1868, WHICH AUTHORIZES $2 MILLION OVER AND ABOVE THAT FIGURE. MOREOVER, FOR THE LAST TWO FISCAL YEARS (FY 83 AND FY 84) THE CONGRESS HAS DELETED FROM THE PRESIDENT'S BUDGET REQUEST A TOTAL OF $20.4 MILLION FOR ANTICIPATED COURT AWARDS FOR LAND ACQUISITION AT SLEEPING BEAR DUNES. TO AUTHORIZE AN ADDITIONAL $2 MILLION SEEMS INCONSISTENT.

S. 1775--GEORGIA O'KEEFFE NATIONAL HISTORIC SITE

THIS BILL WOULD REPEAL SECTION 3 OF A 1980 ACT. THAT SECTION AUTHORIZES THE SECRETARY OF THE INTERIOR TO ACQUIRE THE HOME AND STUDIO OF GEORGIA O'KEEFFE AND UP TO ONE ACRE OF DETACHED LAND FOR ADMINISTRATIVE FACILITIES. WHEN SUFFICIENT LANDS HAVE BEEN ACQUIRED, THE ACT AUTHORIZES THE SECRETARY TO ESTABLISH THE PROPERTIES AS THE GEORGIA O'KEEFFE NATIONAL HISTORIC SITE.

WE UNDERSTAND THAT MS. O'KEEFFE HAS EXPRESSED THE DESIRE THAT HER HOME NOT BECOME A UNIT OF THE NATIONAL PARK SYSTEM. WE RESPECT HER WISHES IN THIS REGARD, AND WE HAVE NO OBJECTION TO THIS REPEAL. NONE OF THE LANDS AUTHORIZED HAVE BEEN ACQUIRED.

S. 1790--ART BARN AND PIERCE MILL IN ROCK CREEK PARK

THIS BILL WOULD AUTHORIZE THE SECRETARY TO ENTER INTO CONTRACTS OR COOPERATIVE AGREEMENTS WITH THE ART BARN ASSOCIATION, INCLUDING MAKING APPROPRIATED FUNDS AVAILABLE TO THE ASSOCIATION, TO ASSIST IN THE PRESERVATION AND INTERPRETATION OF THE BARN AND MILL.

THE ART BARN AND PIERCE MILL ARE HISTORICALLY SIGNIFICANT FEDERAL PROPERTIES OPERATED AS PART OF ROCK CREEK PARK. UNDER SECTION 2(e) OF THE 1935 HISTORIC SITES ACT THE SECRETARY IS AUTHORIZED TO ENTER INTO COOPERATIVE AGREEMENTS WITH ASSOCIATIONS OR INDIVIDUALS TO PROTECT, PRESERVE, OR OPERATE HISTORIC PROPERTIES FOR PUBLIC USE. THE ONLY CAVEAT TO THIS AUTHORITY IS THAT NO SUCH CONTRACT MAY OBLIGATE THE TREASURY UNLESS CONGRESS HAS APPROPRIATED MONEY FOR SUCH PURPOSES.

UNDER EXISTING LAW, WE HAVE FOR THE PAST SEVERAL YEARS CONTRACTED WITH THE ART BARN ASSOCIATION FOR OPERATION AND INTERPRETATION OF THE ART BARN FOR THE BENEFIT OF THE PUBLIC. UNDER THE CONTRACT, WHICH IS PUT OUT FOR BID EVERY YEAR, WE PROVIDE THE CONTRACTOR $20,000 PER YEAR TO SUPPLY THIS SERVICE. BY NAMING THE ART BARN ASSOCIATION SPECIFICALLY, THE EFFECT OF S. 1790 WOULD BE TO PERMIT US TO CONTINUE THE EXISTING ARRANGEMENT BUT WITHOUT THE NEED TO REOPEN THE CONTRACT TO BIDDING EVERY YEAR. WE BELIEVE THE ASSOCIATION IS PERFORMING WELL AND WE SEE NO NEED TO GO THROUGH THE BIDDING PROCESS EVERY YEAR. WE DO SUGGEST, HOWEVER, THAT THE BILL BE AMENDED TO INCLUDE A SUNSET PROVISION TO GIVE US MORE FLEXIBILITY IN THE FUTURE. WE OTHERWISE SUPPORT THE ENACTMENT OF S. 1790.

S. 806--CUMBERLAND ISLAND NATIONAL SEASHORE, REIMBURSEMENT FOR ELECTRICAL FACILITIES.

SUBSECTION (a) OF THE FIRST SECTION OF THE BILL DIRECTS THE SECRETARY OF THE INTERIOR TO REIMBURSE THE OKEFENOKEE RURAL ELECTRIC MEMBERSHIP CORPORATION FOR THE COST INCURRED BY SUCH CORPORATION IN INSTALLING TRANSMISSION LINES, TRANSFORMERS, AND ELECTRIC METERS WHICH SERVE THE NEEDS OF THE FEDERAL GOVERNMENT WITHIN CUMBERLAND ISLAND NATIONAL SEASHORE. NO PAYMENT IS TO BE MADE UNLESS

THE CORPORATION HAS ENTERED INTO A WRITTEN AGREEMENT TO PROVIDE ELECTRICAL SERVICE AND UNLESS THE SECRETARY HAS PERFORMED AN AUDIT OF THE CORPORATION'S RECORDS. SUBSECTION (b) AUTHORIZES NOT MORE THAN $338,000 TO CARRY OUT THE PROVISIONS OF SUBSECTION (a).

CUMBERLAND ISLAND NATIONAL SEASHORE WAS ESTABLISHED PURSUANT TO THE ACT OF OCTOBER 23, 1972 (89 Stat. 1066), TO PROVIDE FOR PUBLIC OUTDOOR RECREATION USE AND ENJOYMENT OF CERTAIN SIGNIFICANT SHORELINE LANDS AND WATERS; AND TO PRESERVE RELATED SCENIC, SCIENTIFIC AND HISTORICAL VALUES. PRIOR TO THE ENACTMENT OF THE LEGISLATION AUTHORIZING THE SEASHORE, THE OKEFENOKEE RURAL ELECTRIC MEMBERSHIP CORPORATION UNDERTOOK TO INSTALL TRANSMISSION LINES, TRANSFORMERS, AND ELECTRIC METERS ON THE ASSUMPTION THAT THE ISLAND WOULD BE DEVELOPED FOR RESIDENCES AND OTHER USES. WITH ACQUISITION OF MOST OF THE ISLAND BY THE FEDERAL GOVERNMENT, SUCH DEVELOPMENT COULD NOT OCCUR, AND WE UNDERSTAND THAT THE CORPORATION HAS BEEN UNABLE TO RECOUP, THROUGH THE SALE OF ELECTRICITY, ITS INVESTMENT IN TRANSMISSION FACILITIES. ONE OF THE PURPOSES OF THIS BILL IS THEREFORE TO PROVIDE RELIEF TO THE CORPORATION BY PAYING FOR THE COST OF THESE FACILITIES.

IN CONSIDERING A SIMILAR BILL IN THE 97TH CONGRESS WE HAD SEVERAL CONCERNS: FIRST, A FEDERAL PAYMENT WOULD ONLY BE JUSTIFIED ON THE BASIS THAT THE PAYMENT REPRESENTED THE COST OF SERVICES OR FACILITIES WHICH THE GOVERNMENT WOULD OTHERWISE HAVE TO PROVIDE DIRECTLY IN FULFILLMENT OF A FEDERAL RESPONSIBILITY; I.E., THE GOVERNMENT SHOULD PAY ONLY FOR FACILITIES NEEDED TO RUN THE NATIONAL SEASHORE. THE GOVERNMENT SHOULD NOT PAY FOR EXPENDITURES MADE BY THE CORPORATION IN ANTICIPATION OF THE ISLAND BEING DEVELOPED FOR HOMESITES. THOSE EXPENDITURES

REPRESENTED A JUDGMENT THAT THE CORPORATION WAS FREE TO MAKE OR NOT TO MAKE ON ITS OWN, WITHOUT GOVERNMENTAL INTERFERENCE. THE GOVERNMENT HAS NO OBLIGATION THEREFORE, TO MAKE THE CORPORATION WHOLE BECAUSE IT MADE THE WRONG DECISION. HOWEVER, WE NOTE THAT S. 806 IS APPROPRIATELY LIMITED TO PAYMENT ONLY FOR THOSE FACILITIES THAT SERVE THE ADMINISTRATIVE NEEDS OF THE FEDERAL GOVERNMENT, UNLIKE THE EARLIER LEGISLATION.

WE HAVE NOT DONE AN AUDIT OF THE CORPORATION TO DETERMINE THE PORTION OF ITS INVESTMENT WHICH MAY BE ATTRIBUTABLE TO FACILITIES WHICH PROVIDE ELECTRICITY FOR THE SEASHORE. FURTHER, WE ASSUME THAT MONTHLY BILLINGS TO ALL THE CORPORATION'S CUSTOMERS INCLUDE AN INCREMENT DESIGNED TO RETIRE ANY INDEBTEDNESS ON ITS PHYSICAL PLANT. AN AUDIT WOULD PROBABLY SHOW HOW MUCH OF SUCH INDEBTENESS, IF ANY, HAS ALREADY BEEN RECOUPED BY THE CORPORATION. HOWEVER, WE NOTE THAT S. 806 PROVIDES FOR AN AUDIT BEFORE ANY PAYMENT IS MADE.

SECOND, IF THE GOVERNMENT PAYS FOR THE COST OF THE FACILITIES THE GOVERNMENT SHOULD OWN WHAT IT PAYS FOR AND TAKE TITLE TO THE FACILITIES. IN AN UNDEVELOPED AREA, NORMALLY THE NATIONAL PARK SERVICE WOULD INSTALL ITS OWN ELECTRICAL UTILITY SYSTEM AT GOVERNMENT EXPENSE AND PURCHASE POWER FROM THE NEAREST SOURCE. THE ELECTRICITY NEEDED TO RUN THE NATIONAL SEASHORE WOULD THUS BE ASSURED. UNDER THE EARLIER BILL, THERE WAS NO GUARANTEE THAT THE CORPORATION WILL CONTINUE TO SUPPLY ELECTRICITY FOR OUR NEEDS AT THE SEASHORE. WHILE WE HAVE NO DESIRE TO TAKE TITLE TO THESE FACILITIES, WE DO BELIEVE THAT ANY PAYMENT SHOULD CARRY WITH IT REQUIREMENTS THAT THE CORPORATION CONTINUE TO OPERATE AND MAINTAIN THESE FACILITIES AND AGREE

TO SUPPLY ELECTRICITY FOR THE ADMINISTRATION OF THE SEASHORE AT REASONABLE RATES. WE NOTE THAT, UNLIKE THE EARLIER LEGISLATION, S. 806 WOULD REQUIRE SUCH ASSURANCES BEFORE ANY PAYMENT WAS MADE.

AS STATED, WE HAVE NOT CONDUCTED AN AUDIT. HOWEVER, WE BELIEVE THAT APPROXIMATELY $60,000 WOULD REIMBURSE THE CORPORATION FOR ITS INVESTMENT IN ONLY THOSE FACILITIES AS ARE USED FOR PURPOSES OF SUPPLYING ELECTRICAL ENERGY TO THAT AREA ON CUMBERLAND ISLAND WHICH IS ADMINISTERED AS PART OF THE NATIONAL SEASHORE. THIS ESTIMATE IS BASED ON THE ESTIMATED COST OF INSTALLING THE SAME FACILITIES DIRECTLY BY THE NATIONAL PARK SERVICE. WE HAVE NO INFORMATION AS TO WHAT THE AUTHORIZATION OF $338,000 IN THE BILL REPRESENTS. HOWEVER, SINCE S. 806 ADDRESSES OUR EARLIER CONCERNS, WE WOULD HAVE NO OBJECTION TO THE ENACTMENT OF THE BILL.

S. 1389--TO TRANSFER ADMINISTRATION OF CERTAIN LANDS IN CALIFORNIA AND NEVADA TO THE BUREAU OF LAND MANAGEMENT

S. 1389 WOULD TRANSFER JURISDICTION OVER CERTAIN LANDS IN DEATH VALLEY NATIONAL MONUMENT, DESCRIBED BY REFERENCE TO AN UNTITLED MAP DATED MAY 1983, TO THE BUREAU OF LAND MANAGEMENT, TO BE ADMINISTERED AS A PART OF THE PUBLIC LANDS.

WE UNDERSTAND THAT THE LAND TO BE TRANSFERRED BY THIS BILL COMPRISES A CLAIM GROUP CALLED THE JAROSITE MINING CLAIM GROUP OF 38 UNPATENTED CLAIMS. WE UNDERSTAND FURTHER THAT THE BILL IS INTENDED TO APPLY TO CLAIMS OWNED BY AN EL CAPITAN MINING COMPANY. ALTHOUGH OUR RECORDS DO NOT INDICATE THAT EL CAPITAN WAS THE OWNER, APPARENTLY EL CAPITAN IS THE PURPORTED SUCCESSOR TO M. S. AND W. RESOURCES, INC., A VANCOUVER, CANADA, FIRM, WHICH OUR RECORDS INDICATE WAS THE CLAIMANT FOR THESE 38 CLAIMS.

NATIONAL PARK SERVICE MINING ENGINEERS EXAMINED THE CLAIMS IN NOVEMBER 1978 AND IN EARLY 1979. THIS EXAMINATION WAS CONDUCTED WITH A REPRESENTATIVE OF M. S. AND W. RESOURCES. TWO COMPLAINTS WERE ISSUED IN 1979 TO CONTEST THE VALIDITY OF THE CLAIMS (CA5317 AND CA6239). THE CLAIMANT OF RECORD, M. S. AND W. RESOURCES, FAILED TO ANSWER THE COMPLAINTS, AND THE CLAIMS WERE DECLARED NULL AND VOID. THE BUREAU OF LAND MANAGEMENT CLOSED THE CASES IN 1979.

THE EFFECT OF ENACTMENT OF S. 1389 WOULD BE TO PLACE ADMINISTRATIVE JURISDICTION OVER APPROXIMATELY 1,500 ACRES OF NATIONAL MONUMENT LAND UNDER THE BUREAU OF LAND MANAGEMENT FOR ADMINISTRATION AS PART OF THE PUBLIC LANDS. THE BILL DOES NOT REVISE THE BOUNDARY OF THE MONUMENT, BUT BY MAKING THIS FORMER CLAIM GROUP SUBJECT TO THE LAWS APPLICABLE TO THE PUBLIC LANDS, IT AUTHORIZES THE DISPOSAL OF THESE LANDS, EITHER BY LOCATION, ENTRY, AND PATENT UNDER THE MINING LAW OF 1872 OR UNDER THE PROVISIONS OF TITLE II OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976.

THE JAROSITE CLAIM GROUP WAS PART OF THE UBEHEBE MINING DISTRICT, FORMED IN 1907. THE HISTORY OF THE DISTRICT, WHICH LIES AT THE EXTREME WESTERN BOUNDARY OF THE MONUMENT IN CALIFORNIA, IS ONE OF MOSTLY PROSPECTING AND SOME MINING. THE FIRST CLAIMS WERE LOCATED IN 1875 FOR COPPER. ONLY ONE MINE WAS ACTIVE IN THE 1920'S AND 1930'S AND THAT PRODUCED SOME LEAD. THE MOST RECENTLY ACTIVE MINE WAS A LEAD MINE WHICH SHUT DOWN IN 1952.

DEVELOPMENT OF THE FORMER JAROSITE CLAIM GROUP BEFORE IT WAS DECLARED NULL AND VOID IN 1979 CONSISTED ONLY OF LIMITED DRILLING AND CONSTRUCTION OF ACCESS AND

DRILL ROADS. THE ONLY RECORD OF MINERAL PRODUCTION FROM THIS AREA ON THE WEST SLOPES OF UBEHEBE PEAK WAS 20 TONS OF COPPER/SILVER ORE SHIPPED IN 1915, ACCORDING TO THE CALIFORNIA DIVISION OF MINES.

THE NATURAL AND CULTURAL RESOURCES VALUES OF THE UBEHEBE PEAK AREA OF DEATH VALLEY NATIONAL MONUMENT, WHICH INCLUDES THE FORMER JAROSITE CLAIMS, ARE SUCH THAT WE BELIEVE THE LANDS SHOULD CONTINUE TO BE MANAGED AS PART OF THE MONUMENT INSTEAD OF BEING DISPOSED OF FOR MINING OR OTHER PURPOSES: THE LANDS ARE WITHIN THE AREA RECOMMENDED TO THE CONGRESS IN DECEMBER 1974 FOR DESIGNATION AS WILDERNESS; THE AREA IS IMPORTANT HABITAT FOR DESERT BIGHORN SHEEP, BEING LOCATED OUT OF THE FERAL BURRO'S OVERLAPPING RANGE AND THEREFORE SHEEP DO NOT COMPETE WITH BURROS HERE; PLENTIFUL WATER--OF GREAT IMPORTANCE TO THE SHEEP--IS AVAILABLE 7.5 MILES AWAY IN NATURAL SPRINGS; AND THE AREA IS BELIEVED TO BE A LAMBING AREA FOR THE DESERT BIGHORN. IN ADDITION, THE UBEHEBE PEAK AREA OFFERS A WIDE RANGE OF NEARLY UNSPOILED DESERT SCENERY FOR VISITORS TO THE MONUMENT.

WE MUST STRONGLY OPPOSE THE ENACTMENT OF S. 1389 FOR THE REASONS STATED ABOVE.

S. 1688--SITKA NATIONAL HISTORICAL PARK

S. 1688 WOULD AMEND SECTION 3 OF THE ACT OF OCTOBER 18, 1972 (86 Stat. 904), AS AMENDED BY SECTION 101, PARAGRAPH (23), OF THE ACT OF NOVEMBER 10, 1978 (P.L. 95-625; 92 Stat. 3472), BY REVISING THE DEVELOPMENT CEILING FOR SITKA NATIONAL HISTORICAL PARK IN ALASKA FROM $1,571,000 to $6 MILLION.

SITKA NATIONAL HISTORICAL PARK IS THE SITE OF AN INDIAN FORT WHERE IN 1804 THE TLINGIT INDIANS MADE THEIR LAST STAND AGAINST RUSSIAN COLONIZERS. THE AREA WAS PROCLAIMED A NATIONAL MONUMENT ON MARCH 23, 1910, UNDER THE AUTHORITY OF THE ANTIQUITIES ACT OF JUNE 8, 1906 (34 Stat. 225; 16 U.S.C. 431), AND THE BOUNDARY REVISED BY THE PROCLAMATION OF FEBRUARY 25, 1952 (17 F.R. 1781, FEBRUARY 29, 1952). UNDER THE ACT OF OCTOBER 18, 1972 (P.L. 92-501; 86 Stat. 904), THE MONUMENT WAS REDESIGNATED AS A NATIONAL HISTORICAL PARK, THE BOUNDARY WAS ENLARGED, AND CEILINGS FOR LAND ACQUISITION (NOT TO EXCEED $140,000) AND DEVELOPMENT ($619,000 AT JUNE 1971 PRICES) WERE ESTABLISHED. THE ACT OF NOVEMBER 10, 1978 (P.L. 95-625; 92 Stat. 3472) CHANGED THE DEVELOPMENT CEILING BY DELETING THE ESCALATION CLAUSE AND INCREASING THE AMOUNT AUTHORIZED FOR DEVELOPMENT FROM $619,000 TO NOT TO EXCEED $1,571,000.

FROM 1972 THROUGH FISCAL YEAR 1981, A TOTAL OF $1,452,000 HAS BEEN APPROPRIATED FOR DEVELOPMENT FOR SUCH PROJECTS AS A UTILITY BUILDING, STABILIZATION OF THE RUSSIAN BISHOP'S HOUSE, AND SEWAGE SYSTEM MODIFICATION. FOR FISCAL YEAR 1982, IN THE DEPARTMENT'S PARK RESTORATION AND IMPROVEMENT PROGRAM, $1,204,000 HAS BEEN APPROPRIATED FOR ADDITIONAL REHABILITATION, RESTORATION, AND FIRE SUPPRESSION WORK AT THE RUSSIAN BISHOP'S HOUSE. THUS, THE DEVELOPMENT CEILING HAS BEEN EXCEEDED BY $1,085,000.

WE CAN ONLY SUPPORT A CEILING INCREASE IN AN AMOUNT TO COVER FUNDS ALREADY EXPENDED. FUTURE PROJECTS WILL BE CONSIDERED IN THE REGULAR BUDGET PROCESS, AND ANY CEILING INCREASE WOULD BE CONSIDERED AT THAT TIME.

S. 1705--FIRE ISLAND NATIONAL SEASHORE AMENDMENTS ACT OF 1983

S. 1705 AMENDS THE ESTABLISHING LEGISLATION FOR FIRE ISLAND NATIONAL SEASHORE (P.L. 88-587).

SECTION 2 DIRECTS THE SECRETARY OF THE INTERIOR TO SELL BACK ANY PROPERTY ACQUIRED BY CONDEMNATION UNDER THE ACT TO THE HIGHEST BIDDER, AT NOT LESS THAN FAIR MARKET VALUE AND SUBJECT TO COVENANTS THAT WOULD ENSURE THAT THE LANDS ARE USED IN A MANNER CONSISTENT WITH FEDERAL REGULATIONS AND LOCAL ZONING ORDINANCES. IT ALSO PROVIDES THAT MONEY RECLEVED FROM CONDEMNED PROPERTIES WHICH ARE "SOLD BACK" WITH RESTRICTIONS WILL BE RETAINED BY THE SECRETARY AND USED ONLY TO ACQUIRE (I.E. CONDEMN) PROPERTY UNDER THIS ACT.

SECTION 3 CONTAINS LANGUAGE WHICH REPLACES SECTION 3(e) OF THE ESTABLISHING LEGISLATION FOR THE NATIONAL SEASHORE. THE NEW SECTION 3(e) PROVIDES FOR THE RESUMPTION OF THE SECRETARY'S AUTHORITY TO CONDEMN A PROPERTY IF THAT PROPERTY BECOMES THE SUBJECT OF A VARIANCE OR AN EXCEPTION TO AN APPROVED LOCAL ZONING ORDINANCE AFTER PASSAGE OF THE AMENDMENTS ACT AND THEREBY FAILS TO MEET THE STANDARDS OF THE FEDERAL REGULATIONS. UNDEVELOPED PROPERTY WITHIN THE DUNE DISTRICT IS EXCLUDED FROM THIS PROVISION.

MR. CHAIRMAN, WE RECEIVED THIS LEGISLATION FOR REVIEW ONLY LAST WEEK, AND HAVE NOT HAD SUFFICIENT OPPORTUNITY TO COMPLETE OUR ANALYSIS OF THE COMPLEX ISSUES INVOLVED. NEVERTHELESS, WE HAVE SOME IMPORTANT INITIAL CONCERNS ABOUT THIS BILL, INCLUDING: (1) WHETHER OR NOT LAND ACQUISITION IS NECESSARILY THE BEST VEHICLE FOR PROTECTION OF THE NATIONAL SEASHORE; (2) LACK OF COMPATIBILITY OF THIS LEGISLATION WITH THE SEASHORE'S LAND PROTECTION PLAN, WHICH SUGGESTS PREFERRED ALTERNATIVES TO ACQUISITION, SUCH AS ZONING ENFORCEMENT; (3) THE NATURE OF THE REVOLVING FUND; AND (4) THE IMPLICATIONS AND POTENTIAL COSTS TO THE TAXPAYER OF THIS TYPE OF LAND MANAGEMENT UNDER THE UNUSUAL DYNAMICS OF A COASTAL BARRIER ENVIRONMENT.

WE WILL PROVIDE THE SUBCOMMITTEE WITH A FULL REPORT WHEN OUR ANALYSIS IS COMPLETE, AND THEREFORE RECOMMEND THAT NO ACTION BE TAKEN ON THE BILL AT THIS TIME. WE PLAN TO COMMENT SUBSTANTIVELY WITHIN THE NEXT FEW WEEKS.

THIS CONCLUDES MY PREPARED REMARKS, MR. CHAIRMAN. I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS.

Senator WALLOP. Thank you, Mr. Dickenson.

Mr. DICKENSON. Yes, sir. Senator Wallop. We will hear from Deputy Director Vail next.

I might just say with regard to S. 1705, in realizing the short period of time, that we would certainly be agreeable to 1 month rather than 2 weeks.

Mr. DICKENSON. That would be greatly appreciated, Mr. Chairman.

Senator WALLOP. As I understand it, obviously there are some problems as those expressed by Ms. Chambers. I think in that instance that we better slow this enough so that some rational heads can look at it and then come up with a problem-solving resolution.

Mr. DICKENSON. I appreciate that very much. We have been deeply engaged for many months now in a land protection planning effort which involves several communities and four zoning authorities and other interested individuals.

It has been our view, as a result of this planning effort and the public involvement process, that some or many of the past problems tending toward resolution under the deemphasis of acquisition and a primary emphasis upon zoning and the regulatory matters have to be considered. Thank you.

Senator WALLOP. I think that makes sense.

Mr. Vail, please proceed.

STATEMENT OF DELMAR D. VAIL, DEPUTY DIRECTOR, LANDS AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. VAIL. Thank you, Mr. Chairman.

We have three bills to respond to this morning. The first one is S. 1654. It is an identical bill to H.R. 451, Mr. Chairman.

Senator WALLOP. Yes.

Mr. VAIL. This would legalize, validate, and confirm certain conveyances of rights-of-way made by the Central Pacific Railway Co. over 40 parcels of land, that is, as far as any interest of the United States in such lands is concerned.

The parcels that are involved are parts of 400-foot wide rights-of-way that were granted by the United States to the Central Pacific Railway Co. under the provisions of the act of July 1, 1862. By the way, that is now known as the Southern Pacific Transportation Co.

We have no objection to enactment of the bill. There are a couple of points that I want to emphasize and not to go clear through the whole statement.

There is no general authority for the railroad companies to make conveyances of any or all of the lands or interests in lands within their rights-of-way.

In the past several years, Congress has authorized or considered a number of bills to validate prior conveyance of railroad rights-of-way, such as those involved in these bills. The Department of the Interior has no objection to the enactment of the bills provided three criteria are met. These criteria are the parts of the rights-of-way under consideration traverse non-Federal lands; that the width of the remaining rights-of-way be 50 feet or more on each side of the center line of the main railroad track or tracks; and that all oil, coal, and other minerals be reserved to the United States.

The rights-of-way in S. 1654 and H.R. 451 do traverse non-Federal lands, so the first criterion is met.

Sections 6(a)(1) and 6(b) of the bills meet the second and third criteria respectively, making these bills consistent with limitations in both the act of March 8, 1922, and the act of May 25, 1920.

The enactment of either S. 1654 or H.R. 451 would validate conveyances listed in the bill, as far as any interest of the United States in the involved lands is concerned. The involved parties would not be required to compensate the United States for the additional interest that they would be acquiring in the lands comprising the rights-of-way.

We would not object, therefore, to enactment of the proposed legislation because it is required to eliminate existing title problems. However, the Department of the Interior will not support future legislation that is intended to confirm or validate any future conveyances similar to those involved in these bills unless the United States is compensated, at fair market value, for its interests.

Next is S. 1547. Again, this is an identical bill to H.R. 1191 as passed by the House on May 17, 1983.

The bills would amend the act of March 3, 1919, Public Law 65-332, by deleting the requirement that the town of Olathe use the lands conveyed to the town under that act only for the protection of reservoirs and waterworks, and, in addition, would remove the provision requiring that the lands revert to the United States if the lands are used for another purpose or sold.

We oppose enactment of S. 1547, as we did H.R. 1191, as presently written. We would not object if they were amended as we suggest.

By the act of March 19, 1919, the Secretary of the Interior was directed to convey to the town of Olathe 600 acres for the purpose of the protection of the reservoirs and water supply pipelines and waterworks system of the town upon payment of $1.25 per acre.

Now, the act further directed that title to the land revert to the United States if any of the land were sold or ceased to be used for the purposes provided in the act. The mineral interests in the lands were reserved to the United States.

I understand that the town no longer has use for the reservoir and pipeline to supply domestic water. The water is now supplied by the Project 7 Water Authority. It is our understanding that the town is concerned that, since it receives water from Project 7, the Bureau of Land Management might exercise its authority to revert title to the land in question to the United States. We further understand that town officials desire to develop the land for public recreation purposes.

The lands which are subject to S. 1547 are valued at approximately $250,000. Removal of the actual reversionary interest of the United States would allow the town of Olathe to use the reservoir property as collateral for a loan or to dispose of the property in any manner it chooses.

We feel that this would create an unfair windfall to the town at the expense of the United States and could create an undesirable precedent.

The lands were conveyed at less than fair market value for a specific public purpose. Thousands of acres of public land have been conveyed by the United States with similar conditions under the Recreation and Public Purposes Act. If this legislation is enacted, other communities could attempt to have similar legislation introduced, allowing them to dispose of their property or use it for any purpose after 10 years have elapsed.

We recognize that public needs for land change over the years. Although the tract in question is no longer needed for the purposes identified in the 1919 act, the town of Olathe does wish to use the lands for public recreation purposes.

We would have no objection to changing the public use to which the lands are to be put. To accomplish this, we suggest that the act of March 19, 1919, be amended to delete the requirement that the lands be used for the purpose of the protection of the reservoirs and water supply pipelines and water works system and to substitute, instead, the requirement that the lands be used for a public purpose. Such a requirement is essential to prevent an unfair windfall to the town at the expense of the United States.

We also recommend that the reversionary interest of the United States be retained. This would comply with the spirit of the Recreation and Public Purposes Act, enacted 7 years after the 1919 act, which reflects the congressional policy with reference to such lands.

That summarizes our position and interest in S. 1547.

The last bill is quite involved, sir. S. 1860 would confirm titles to the tracts of land that the Federal Government purported to grant to either California or Nevada on or before July 7, 1980, and that are found within the other State. This resulted from the uncertainty as to the precise location on the ground of the California and Nevada boundary. The uncertainty was resolved by the Supreme Court in the case of *California* v. *Nevada* in 1980.

We support the concept of S. 1860. That is, confirming the titles to these tracts through legislation rather than litigation. However, we have several concerns with S. 1860 that we believe need to be addressed.

Rather than to go through this at this time, we propose that we work with the staff on it. There is a possible cloud on some of the titles. We need to get into some discussions. We stand ready to do that.

In summary, we feel the subcommittee should be cognizant of the possible precedent that could be established by the passage of S. 1860. Enactment of the bill could have an impact beyond the immediate concerns of California and Nevada. In particular, I refer to a resolution adopted in 1978 by the Western States Land Commissioners. I have a copy of that resolution for the staff. This could lead to some other problems that we ought to be cognizant of. But we do support the concept of this legislation and we would like to work with you to perfect it.

[The prepared statement of Mr. Vail follows:]

OCT 6 1983

STATEMENT OF DELMAR D. VAIL, DEPUTY DIRECTOR, LANDS AND RENEWABLE RESOURCES, BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER, COMMITTEE ON ENERGY AND NATURAL RESOURCES, U.S. SENATE ON S. 1654 AND H.R. 451, BILLS "TO VALIDATE CONVEYANCES OF CERTAIN LANDS IN THE STATE OF CALIFORNIA THAT FORM PART OF THE RIGHT-OF-WAY GRANTED BY THE UNITED STATES TO THE CENTRAL PACIFIC RAILWAY COMPANY," S. 1547 AND H.R. 1191, BILLS "TO AMEND THE CONDITIONS OF A GRANT TO THE TOWN OF OLATHE, COLORADO, AND FOR OTHER PURPOSES," AND S. 1860, A BILL "TO CLEAR TITLE TO CERTAIN LANDS ALONG THE CALIFORNIA - NEVADA BOUNDARY."

S. 1654 and H.R. 451

S. 1654 and H.R. 451 are identical bills that would legalize, validate and confirm certain conveyances of rights-of-way made by the Central Pacific Railway Company of over 40 parcels of land, as far as any interest of the United States in such lands is concerned. The parcels involved are parts of 400-foot wide rights-of-way that were granted by the United States to the Central Pacific Railway Company under the provisions of the Act of July 1, 1862. The Central Pacific Railway Company is now operating as the Southern Pacific Transportation Company. Of the 40 parcels involved in these bills, 37 are in San Joaquin County, 2 are in Sacramento County and 1 is in Kings County, California.

We would have no objection to enactment of the bills.

There is no general authority for the railroad companies to make conveyances of any or all of the lands or interests in lands within their rights-of-way.

However, the Congress has authorized the conveyance of interests in railroad rights-of-way in certain circumstances. The Act of March 8, 1922 (43 U.S.C. 912), provides that upon a finding by an Act of Congress or a court that a railroad has forfeited or abandoned a right-of-way, all right, title and interest of the United States in the lands within the right-of-way pass to those parties who have acquired title of the United States in the land adjoining the rights-of-way, except that those forfeited rights-of-way located in a municipality pass to the municipality. The 1922 Act specifically exempted from its scope conveyances of railroad rights-of-way that were made to third parties prior to Congressional confirmation of the forfeiture or abandonment of such rights-of-way. Thus, when a railroad conveys a portion of its rights-of-way to third parties prior to such Congressional or judicial confirmation as was done in the conveyances involved in this legislation, Congressional action is necessary to convey any interests in the land remaining in the United States.

The Act of May 25, 1920 (43 U.S.C. 913), authorized railroad companies that had been granted rights-of-way through public lands, to convey such rights-of-wa to States, counties, or municipalities for use as public highways or streets, but prohibits diminishing the rights-of-way to less than 50 feet on each side of the center of the main track. A law similar to the 1920 Act is also found in section 316 of Title 23 of the United States Code.

In the past several years, the Congress has considered a number of bills to validate prior conveyances of railroad rights-of-way, such as those involved in these bills. The Department of the Interior has had no objection to the enactment of the bills provided that three criteria were met. These criteria are that the parts of the right-of-way under consideration traverse non-Federal lands; that the width of the remaining right-of-way be 50-feet or more on each side of the center line of the main railroad track or tracks; and that all oil, coal or other minerals be reserved to the United States. The rights-of-way involved in S. 1654 and H.R. 454 do traverse non-Federal lands, so the first criterion is met. Sections 6(a)(1) and 6(b) of the bills meet the second and third criteria respectively, making these bills consistent with limitations in both the Act of March 8, 1922 and the Act of May 25, 1920.

Enactment of either S. 1654 or H.R. 451 would validate the conveyances listed in the bill, as far as any interest of the United States in the involved lands is concerned. The involved parties would not be required to compensate the United States for the additional interest that they would be acquiring in the lands comprising the rights-of-way.

We would not object to enactment of the proposed legislation because it is required to eliminate existing title problems. However, the Department of the Interior will not support future legislation that is intended to confirm or validate any future conveyances similar to those involved in these bills unless the United States is compensated, at fair market value, for its interests.

S. 1547 and H.R. 1191

S. 1547 is identical to H.R. 1191 as passed by the House of Representatives on May 17, 1983. The bills would amend the Act of March 3, 1919 (Public Law 65-332), by deleting the requirement that The Town of Olathe use the lands conveyed to the Town under that Act only for the protection of reservoirs and waterworks, and, in addition, would remove the provision requiring that the lands revert to the United States if the lands are used for another purpose or sold. If any of the lands are sold or otherwise alienated by the Town on or before January 1, 1994, the proceeds of such sale (excluding the value of any improvements made by the town) or the fair market value of the lands or part thereof (excluding the value of improvements made by the Town) at the time of such sale or alienation, whichever is greater, would be paid to the United States by the Town.

The payment to the United States would not have to be made if the sale occurs as a consequence of a judgment at law or equity to recover sums owed by the Town pursuant to a mortgage, sale to a trustee, or similar agreement entered into by the Town to secure funds for public purposes, directly related to repair, maintenance, or modernization of the reservoirs, water supply pipelines or waterworks system of the Town.

We oppose enactment of S. 1547 and H.R. 1191 as presently written, but would not object to them if amended as we suggest.

By the Act of March 19, 1919, the Secretary of the Interior was directed to convey to the Town of Olathe 640 acres for the purpose of the protection of the reservoirs and water supply pipelines and waterworks system of the Town upon payment of $1.25 per acre. The Act further directed that title to the land revert to the United States if any of the land were sold or ceased to be used for the purposes provided in the Act. Mineral interests in the lands were reserved to the United States.

The Town of Olathe no longer uses the reservoirs or pipelines to supply domestic water. Its water is now supplied by the Project 7 Water Authority. It is our understanding that the Town is concerned that since it receives water from Project 7, the Bureau of Land Management might exercise its authority to revert title to the land in question to the United States. We further understand that town officials desire to develop the land for public recreation purposes.

At an April 5, 1983, hearing in the House of Representatives, the Mayor of Olathe testified that the Town has serious financial problems: 50 percent of the population (1,252 in 1980) consists of persons with low and moderate income; the water distribution system was replaced in 1979 at a cost of [illegible], in 1962 the sewer system was upgraded and lagoons aerated at a cost of $331,000; and the Town is prohibited by it's legal limit from using bonds to finance future improvements.

The lands which are the subject of S. 1547 and H.R. 1191 are valued at approximately $250,000. Removal of the reversionary interest of the United States would allow the Town of Olathe to use the reservoir property as collateral for a loan or to dispose of the property in any manner it chooses.

If the Town were to mortgage the property conveyed under the 1919 Act, it would appear that there would be a distinct possibility of default. Since the bills would exempt the Town from the requirement of paying the United States for the lands if they are sold as a result of default, there does not appear to be much incentive for the Town to repay such a loan.

Under the bills, the Town would be free to sell or otherwise dispose of the lands after January 1, 1994. This would create an unfair windfall to the Town at the expense of the United States, and could create an undesireable precedent. The lands were conveyed at less than fair market value for a public purpose. Thousands of acres of public land have been conveyed by the United States with similar conditions under the Recreation and Public Purposes Act. If this legislation is enacted, other communities could attempt to have similar legislation introduced, allowing them to dispose of their property or use it for any purpose after 10 years have elapsed.

Although the Town does not use the reservoir as its primary water source, parcels adjacent to the subject lands are provided a portion of their water supply from the reservoirs and pipelines. Conveyance of the lands could result in terminating the water flow. Alternative land uses, such as subdivision, could conflict with adjacent public land management and interfere with a prime hunting area, and range improvement projects such as controlled burning and could result in extensive disruption of important wildlife habitat. Deer and elk inhabit the area throughout the year. Hunting is heavy during hunting seasons. Golden and bald eagles hunt the area seasonally.

We recognize that public needs for land change over the years. Although the tract in question is no longer needed for the purposes identified in the 1919 Act the Town of Olathe does wish to use the lands for public recreation purposes. We would have no objection to changing the public use to which the lands are to be put. To accomplish this we suggest that the Act of March 19, 1919, be amended to delete the requirement that the lands be used for the purpose of the protection of the reservoirs and water supply pipelines and water works system and to substitute instead the requirement that the lands be used for a public purpose. Such a requirement is essential to prevent an unfair windfall to the Town at the expense of the United States.

We also recommend that the reversionary interest of the United States be retained. This would comply with the spirit of the Recreation and Public Purposes Act, enacted 7 years after the 1919 Act, which reflects the Congressional policy with reference to such lands.

In summary, we are opposed to enactment of H.R. 1547 and H.R. 1191, as presently written because they would amount to a cost-free conveyance of land valued at about $250,000.

Our proposed amendment would simply change the required use of the land from protection of the water works and reservoirs to "public purposes," and would comply with the spirit of the Recreation and Public Purposes Act while protecting the interest of the United States. We will be glad to work with subcommittee staff in developing specific language of amendment.

S. 1860

S. 1860 would confirm titles to the tracts of land that the Federal Government purported to grant to either California or Nevada on or before July 7, 1980, and that are found within the other State. This resulted from uncertainty as to the precise location on the ground of the California - Nevada boundary. The uncertainty was resolved by the Supreme Court in the case of California v. Nevada in 1980.

We support the concept of S. 1860, that is, confirming the titles to these tracts through legislation rather than litigation. However, we have some concerns with S. 1860 that we believe must be addressed.

There are a number of tracts along the California - Nevada border which were thought to have been granted to either one of the two States by the Federal Government and that subsequently passed, or purportedly passed, from state ownership to third parties. However, as events turned out, these tracts wound up not being within the State for which the Federal grant was intended and as required by law. Thus, the titles to the these tracts now are clouded.

Litigation or administrative proceedings to quiet title against the Federal Government would surely be an expensive and time consuming proposition for all involved parties.

The findings of S. 1860 include statements that thousands of acres of lands were transferred to California or Nevada by the United States and that "substantially all" of those lands were subsequently conveyed into private ownership. This implies that some of the lands remain in State ownership. If the bill is to be limited to quieting title as to tracts claimed by third parties, then the remaining state-owned tracts should be identified and eliminated from the bill, since technically they still may be owned by the United States.

The descriptive references in sections 2 and 3 of S. 1860 are too vague for accurate land record keeping purposes. For this reason we recommend that the sections be amended to provide for specific identification of the tracts that would be affected by adding a provision to the bill by publication in the *Federal Register*. The bill then would contain a provision confirming the appropriate state's title to each each of the specifically described tracts.

Most of the lands of concern to the two States were clear listed, or in some cases may have been patented. A clear list is the evidence of title to the State and is equivalent to a land patent. Another and less complicated approach to the bill would be to amend the Act of March 3, 1891 (43 U.S.C. 1166). That law provides that suits by the United States to vacate and annul a public land patent shall only be brought within six years after the date of issuance of the patent. Currently, there is a difference of opinion as to whether the Act applies not only to patents but to clear listed grants as well. The 1891 Act could be amended to provide expressly that the six-year limitation period applies with equal force and effect to all clear listed lands. This approach has the virtue of eliminating most of the title problems encountered as to the California and Nevada tracts; and, also, it would remedy any comparable situation that may exist as to lands in other states. There is one caveat, however. A provision would have to be added to the bill to cover the few fractional border sections of school grant lands in place that are now claimed by the United States and California. The bill could either resolve the dispute as to these few tracts in favor of the State or leave the issue open for future resolution through the courts or by means of administrative action.

If the present format of S. 1860 is retained, the right of the United States, under the Act of March 3, 1891, to vacate or annul grants within six years should be preserved, taking into account that sections 2 and 3 apply to real property tranfers occurring on or before July 7, 1980. There are indications that both California and Nevada or either of them may seek to acquire additional Federal lands from the public domain within their own boundaries as indemnity for an alleged loss of land to the other State after title has been quieted under the terms of S. 1860. It is important, therefore, that the intentions of both States with respect to possible new indemnity claims be assessed before final action is taken on S. 1860. In this connection, you may wish to consider the addition of a new section 5 to the bill, which would be intended to prevent such claims or compensatory actions against the United States by either State, resulting from the enactment of S. 1860. We will be happy to suggest appropriate language for this purpose to subcommittee staff.

We do not know the significance of the date of July 7, 1980, in S. 1860. We note, however, that the Supreme Court decided California v. Nevada on June 10, 1980 and that probably the final judgement in the case was filed on or about July 7, 1980.

We suggest that the term "real property" in sections 2, 3, and 4 be deleted and the words "public lands" be substituted because the term "real property" may be taken to include grants of "acquired" lands made to either State at any time prior to July 7, 1980. To our knowledge no grants or transfers of Federally acquired lands have ever been questioned by either California or Nevada in the context of their boundary line problems.

If either of the two alternatives previously discussed is adopted, namely, specific identification of each of the affected tracts of land or amending the Act of March 3, 1891, then section 4 of the bill can be eliminated. If, however, it is decided to retain section 4, the statutory citations in that section should be stated with greater precision, providing the pertinent chapters and sections of each statute. We would be happy to provide that information to subcommittee staff. Moreover, the Act of July 23, 1866, (43 U.S.C. 865) is not cited in section 4 of S. 1860. Section 4 of the 1866 Act supplements section 9 of the Act of September 4, 1841, which is cited in S. 1860. The Town Site Act of March 2, 1867, which is cited in section 4 of the bill, did not expressly grant any public lands to either California or Nevada and thus appears not to fall within the scope of section 4. It should, therefore, be deleted. Also, if section 4 of the bill is retained, we suggest that the catch-all provisions at the end of that section be deleted. The following language should be substituted: " and any other Act of Congress amending or supplementing the Acts listed above in this section." If there are any other basic "granting" or "transfer" statutes that are relevant, they should be listed specifically in section 4.

Section 1 of the Act of July 23, 1866, 14 Stat. 218-219, offers an example of an earlier curative statute pertaining to lands that apparently were lawfully selected by the State of California but, nevertheless, were not disposed of by that State to purchasers in good faith under the then-existing disposal laws of Calfornia. It should be noted that Congress excepted from the curative effects of the Act several categories of lands in order to protect certain private rights and public uses. Whether exceptions of this nature would be appropriate in the case of S. 1860 cannot be determined at this point without further knowledge of the particular tracts that would be affected by S. 1860 and their current legal status.

The subcommittee should be cognizant of the possible precedent that could be established by the passage of S. 1860. Enactment of the bill could have an impact beyond the immediate concerns of California and Nevada. In particular, I refer to a resolution, adopted in 1978, by the Western States Land Commissioners. A copy of the resolution is available for your information.

In summary, we support the concept of S. 1860 and agree that legislation is the best answer to this problem. We will be happy to work with the subcommittee to resolve the issues I have highlighted.

I will be pleased to respond to any questions that the subcommittee may have.

Senator **WALLOP**. Thank you, Mr. Vail. Is Mr. McKay aware of the problems?

Mr. **VAIL**. Yes, sir. We are finding some as we go along ourselves. It is a rather complicated situation where we transfer lands to both States. It is going to take some work to clear up all the issues.

Senator **WALLOP**. Thank you. I appreciate it.

Senator Evans, do you have a question?

Senator **EVANS**. Yes, Mr. Chairman.

Senator **WALLOP**. Senator.

Senator **EVANS**. I have two questions, one to Mr. Dickenson on S. 806 first.

Mr. **DICKENSON**. Yes, sir.

Senator **EVANS**. At the time that the electric cooperative built the facilities, did they know that the seashore preservation was to be implemented? Was it before they were in there or after, or during this time? What was their knowledge at the time?

Mr. **DICKENSON**. Senator, I understand that they had, or claimed, no knowledge or that. It was to become public property at the time. They made the investment in the belief that private enterprise would prevail, that they would be selling electricity on the homesites.

Senator **EVANS**. Now, Mr. Vail, on S. 1654, you say that you do not object to enactment of the legislation. However, on future legislation, you would object unless the United States is compensated at the fair market value for its interests.

Mr. **VAIL**. Yes.

Senator **EVANS**. I'm curious about that. As I understand it, these were originally lands which were dedicated to the railroad for, that is, in the 1800's, for, that is, in exchange for, and development of the railroads, the 400-foot right-of-way. Presumably, that then became the railroad's right-of-way in exchange for which the railroad helped to develop the West. Why do we now think that if some of these are clouded titles that were in the original grant of the right-of-way, then why should we have any further interest in this?

Mr. **VAIL**. The granting of the right-of-way was for the purpose of having the railroad tracks there.

Senator **EVANS**. I understand.

Mr. **VAIL**. First of all, as stated, there is no general authority for the railroad to convey lands in the rights-of-way. There are those lands that were granted to them on either side. I do not have sufficient knowledge to express the difference there. If the right-of-way is granted, it is granted for that purpose regardless of whether it is the railroad or any other purpose. If the railroad is no longer going to be in use, it is our contention that they don't have the right to transfer the land in the right-of-way.

Senator **EVANS**. Is that clearly stated in the original deed that goes to the railroad?

Mr. **VAIL**. I have the Solicitor with me if you want him to respond on that.

Senator **EVANS**. Yes.

Senator **WALLOP**. Would you identify yourself?

Mr. **WOODCOCK**. Richard Woodcock, and I am an attorney with the Office of the Solicitor in the Department of the Interior. The

Railroad Act of 1862 was the statute in question here. It had two grants, one as to the right-of-way, and the other being the land grant section, and the alternate sections on both sides of the right-of-way. The alternate sections were concerned with the construction of the railroad. The right-of-way, however, was a limited grant in the sense that the railroad only had the right to use that land for railroad purposes. As a result, the so-called deed or statute in this case confined the railroad on use of the land for that particular purpose. When the railroads subsequently wished to utilize some of these areas in aid of commerce that would enhance the operation of the roads, it became common for them to issue licenses to third parties, but they were very careful not to convey any specific title to them.

I don't know the particulars of this particular situation regarding these tracks. They may have purported to convey greater interests than the railroad actually had. There is a little question as to whether they are, in fact, conveying an interest as to the United States. That is what Mr. Vail is referring to in terms of whether the United States should be compensated.

Senator **EVANS**. OK. I understand.

Mr. **WOODCOCK**. Yes, sir.

Senator **EVANS**. I guess this takes you back to the original bill. If that is the case, that we believe, in the future, we should receive current market value, then why not seek the same in this particular bill?

Mr. **VAIL**. We would support that. However, there has been a precedent set. We have done this for a long time. The Congress has done this, Senator.

Senator **EVANS**. Yes.

Mr. **VAIL**. We have come to the point where we think you should be cognizant of what is not being properly done, Senator.

Senator **EVANS**. You're saying to stop, but stop next time and not this time. But you wouldn't object to stopping this time?

Mr. **VAIL**. We would not.

Senator **EVANS**. Thank you.

Mr. **VAIL**. Yes, sir.

Senator **WALLOP**. I am going to ask that we insert the statements of John Harold, mayor of Olathe, Colo., and Ms. Ann B. Vance.[1]

I want to thank the administration witnesses. We have, obviously, a considerable amount of staff work and some consultation on the bills.

Mr. **DICKENSON**. Yes, sir.

Mr. **VAIL**. Yes, Senator.

Senator **WALLOP**. We will be in touch over the recess and directly after it. We appreciate your coming here this morning.

With regard to the remaining witnesses, I will call Mr. William C. Lienesch, Assistant Director, Federal Activities, National Parks and Conservation Association, Washington, D.C. We will also call Ms. Laura Beaty, Administrative Assistant, Historic Heritage, National Parks and Conservation Association, Washington, D.C., and Ms. Rosemarie Craven, National Inholders Association, Washington, D.C.

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[1] See appendix.

I am going to do something which is permitted within the committee rules which is a precedent that I do not like to follow. That is to have you all identify yourselves and then, in order, give your testimony. I have to go to a meeting with the majority leader. I am now going to ask Tony Bevinetto to hear your testimony. I'm sorry about that. I don't like to do it, but in this instance it is just unavoidable. I ask your indulgence. If you wish in any way to be heard further in front of me, make that known to Mr. Bevinetto and I will be glad to reconvene the hearing after the recess to hear your testimony in person. I apologize to you but I think this is really necessary that I do this. It has to do with the intelligence budget authorization.

If you will just identify yourselves and we will ask you to go ahead.

Mr. LIENESCH. William C. Lienesch, National Parks and Conservation Association.

Ms. BEATY. Laura Beaty, National Parks and Conservation Association.

Ms. CRAVEN. Rosemarie Craven, National Inholders Association.

Senator WALLOP. If there are any problems, please feel free to let me know. We will reconvene if necessary.

Go ahead, Mr. Lienesch.

STATEMENT OF WILLIAM C. LIENESCH, ASSISTANT DIRECTOR, FEDERAL ACTIVITIES, NATIONAL PARKS & CONSERVATION ASSOCIATION

Mr. LIENESCH. Thank you, Mr. Chairman.

This morning I will be testifying on four of the bills before the subcommittee. I will just go in order numerically, starting with S. 1389, which has to do with the transfer of land in Death Valley National Monument.

We are supporters of the administration's position in this case, which is in opposition to this bill. Over the past several days I have been doing some research and finding more and more evidence that this is a significant part of the park. Some of the reasons for that were listed by the director when he testified. I also believe that it is a potential wilderness area within the park system. I think that the director pointed out with reference to the BLM area that there are some wilderness studies going on.

Beyond this, the major issue here is that it appears that S. 1389 is an attempt to go around the Mining and Parks Act. The mining claim involved here was invalidated. It is our understanding that the original owner or owner at that time did not appeal that invalidation. Now we have some legislation which is trying to get around the Mining and Parks Act. This would be a very dangerous precedent.

So, for these reasons and the significant area and the values in the area and the problems with the attempt to get around the act, that we are definitely opposed to this legislation.

With regard to S. 1688, which would increase the development ceiling for Sitka National Historical Park, we are in support of that. We think that the funds there would be well spent.

On S. 1705, the Fire Island National Seashore, we have not yet developed a firm position on that because of the fact that we only found out about this recently, the hearing.

I would like to make some comments about Fire Island with regard to land acquisition. Of all of the National Park bills that we are familiar with, that is one of the most complex pieces of legislation with regard to land acquisition. This is further compounded by the fact that, since it is a barrier island, the land itself in the park and in the communities is, in a sense, lost as you have storms, and the like. It is a very complex situation. We will be coming up with some comments on the legislation.

There are just three things that we would like to mention in passing. One is that we do believe that there is probably going to be a need for some additional oversight on the revolving fund. We are not exactly sure how that can be done. With the recent Supreme Court decision, there is a question about the constitution, the one-House or two-House veto, but we believe that there has to be some oversight, particularly in the situation where the superintendent could decide to sell off certain lands in order to buy what he thinks are more important lands and, in effect, become a broker in his own right.

There has been some mention, both in the GAO report and the Land Protection Plan, of this. While some of the recommendations in the GAO report are good, there are also some problems with that report which we believe places a little bit too much emphasis on the ability of zoning to protect the resources of the seashore. The Land Protection Plan, in our view, is tending toward a little bit too much reliance on zoning, and we have had some problems in some of the communities on Fire Island.

Finally, with regard to S. 1868, Sleeping Bear Dunes Lakeshore Land Acquisition increase, we are in complete support of this legislation.

In 1982, new legislation was passed with regard to Sleeping Bear Dunes which increased, actually, that is, I guess there was a net decrease of land there, but it kept in the park two important resource areas. This is the major reason why we need the land acquisition ceiling increase over and above the need for additional money for condemnation awards. We have already had one land on the Hill that has a very definite hardship and would not be covered under the ceiling if it does not have the extra $2 million in it.

We are somewhat perplexed by the administration's position. Normally, as far as I know throughout the life of the system, they normally testify with regard to the land acquisition ceilings based on the need. That need is then determined by the case load as well as the potential price of any additions. We have two additions from last year.

They are basically saying that we don't want the money because Congress hasn't been granting us appropriations that were requested, which is an argument that I have never heard raised by the administration with regard to land acquisition ceilings. Objectively, they should do a land acquisition, that is, an analysis, to determine what their needs are. That should be the land acquisition ceiling. Obviously, they have not done that yet in this case or, at least, they have not testified to that fact. It is clear to us that there is a need for the funds, particularly in the hardship cases which have already been discussed by one of the owners.

That concludes my testimony.

[The prepared statement of Mr. Lienesch follows:]

NPCA

Statement of

LAURA BEATY AND WILLIAM LIENESCH

NATIONAL PARKS & CONSERVATION ASSOCIATION

before the

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
U.S. SENATE

on

S.1389, S.1688, S.1705, S.1775, S.1868

October 6, 1983

The National Parks & Conservation Association appreciates the opportunity to testify today. Our comments will be limited to five pieces of legislation: S.1389; S.1688; S.1705; S.1775; and S.1868.

S.1389 would transfer a tract of land in Death Valley National Monument to the Bureau of Land Management. This tract of land is not easily accessible to the public, is not in an exceptionally scenic part of the Monument and is on the Monument's boundary.

However, the mining claims on this land, which appear to be the reason for the proposed deletion, were evaluated by the National Park Service, pursuant to the Mining-in-the-Parks Act of 1976 and found to be invalid. We are greatly concerned that if these lands are deleted in order to circumvent this validity determination, the action could set a dangerous precedent which could lead to other proposals for additional deletions from the Monument in areas which

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are more accessible, more scenic, and which contain natural and cultural resource values important to the monument.

There may be other factors favoring the deletion, of which we are unaware, but if the sole reason is to circumvent the National Park Service's validity determination we feel that the deletion is not supportable and the Committee should not report the bill.

We are in support of S.1688 which would increase the development ceiling for Sitka National Historical Park. The funds are needed and the increased ceiling will allow appropriations to be made.

The legislation (PL 88-587) that established Fire Island National Seashore is a complex piece of legislation especially as it applies to land acquisition. We have not yet finished our review of S.1705 and therefore do not yet have a final position. However, we do agree with the general intent of the legislation to improve those provisions of the law dealing with land acquisition and to establish a revolving fund. However, we are concerned that a revolving fund could be misused and that properties might be sold that should not be. In some form, Congress must retain oversight on both the sale and acquisition of land. We will provide Committee staff with suggested changes to S.1705.

We are greatly concerned by S.1775 which would repeal the designation of the Georgia O'Keeffe National Historic Site. This site clearly qualifies as a unit of the National Park System. The Senate report (96-755) clearly demonstrates the many significant reasons why Miss O'Keeffe's home should be a national historic site. It is very easy to understand Miss O'Keeffe's concerns and those of the village of Abiquiu over the possible changes in the site and increased tourist traffic. Of course, it is possible that increases in tourist traffic may occur in any event. In authorizing the establishment of this historic site, the Senate took this into consideration:

> "In this context, the Committee recognizes that the community of Abiquiu, New Mexico and environs is sparsely populated and does not have the capacity to accomodate high levels of visitation. The Committee expects the NPS to develop the General Management Plan for Georgia O'Keeffe National Historic Site with full consultation in the local community and to develop a travel plan that is sensitive to the community's needs, capabilities, and capacities."

It is quite possible that Park Service involvement could actually enhance the possibility that the site will remain basically unchanged and that tourist traffic will be handled better than the village will be able to do on its own. The National Park Service administers over two-hundred historic sites, battlefields, etc., and, as a result, has a great deal of experience in preserving historic sites and dealing with tourist traffic. While we firmly believe that the Georgia O'Keeffe National Historic Site should be part of the national park system, at a minimum, the Park Service should provide the necessary technical assistance to ensure that the site is preserved and that Abiquiu can deal with possible increases in tourist traffic.

We are in support of S.1868 which would increase the land acquisition ceiling for Sleeping Bear Dunes National Lakeshore. In 1982, Congress passed legislation (PL 97-361) that was widely supported by homeowners, conservationists and many others. This legislation extended the right of use and occupancy for certain property owners, deleted a proposed road corridor, established two resource preservation areas and increased the authorization for land acquisition. Unfortunately, the increased authorization is not high enough to cover anticipated court awards, nor the cost of the resource preservation areas. These two resource preservation areas are very significant and their establishment is an integral part of PL 97-361. In addition, there is at least one owner in one of the preservation areas that is a hardship case. It is essential to raise the acquisition ceiling to pay court awards and acquire land in the resource preservation areas.

Thank you for the opportunity to testify before the Subcommittee today and we would be happy to answer any questions.

STATEMENT OF LAURA L. BEATY, ADMINISTRATIVE ASSISTANT, HISTORIC HERITAGE, NATIONAL PARKS & CONSERVATION ASSOCIATION

Ms. BEATY. My name is Laura Beaty. My written statement is included with Mr. Lienesch's statement. I would like to give testimony, to take this opportunity to highlight this testimony on S. 1775, the Georgia O'Keeffe measure.

From the outset, let me just say that NPCA also respects the wishes of Georgia O'Keeffe. Like many of you, we are very disappointed that this future historic site is to be eliminated before it is even established. There are probably a number of reasons why this action is taking place, but for future reference, let me just mention one.

The law which authorized the establishment of Georgia O'Keeffe called for the completion of a general management plan within 3 years of the passage of that legislation. With all due respect, it is very unusual that the Park Service ever complies with congressional guidelines. In this case they did. The general management plan was completed within 3 years, which I think may have been a direct cause and the needless disturbance of Ms. O'Keeffe at her home.

We would like to make one suggestion regarding the passage of S. 1775. That is that it is not necessarily needed. The existing law makes establishment of the site contingent on the donation of that property by Ms. O'Keeffe to the U.S. Government. In short, if she does not donate the property the site does not become designated.

By utilizing the existing law, this would give her some flexibility in keeping her options open in the future if she should decide to donate the property.

However, being realistic, we realize the committee will probably act on her wishes and pass S. 1775. We only hope that this action will not preclude some future legislation to commemorate this fine American artist.

Thank you, Mr. Chairman.

Senator HECHT [presiding]. Thank you very much for your statement.

Ms. BEATY. Thank you for the opportunity to appear before the committee.

[Subsequent to the hearing Ms. Beaty submitted the following statement:]

NPCA

STATEMENT OF

LAURA L. BEATY

NATIONAL PARKS & CONSERVATION ASSOCIATION

before the

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

U.S. SENATE

on

S.1790

October 6, 1983

NPCA opposes the enactment of S.1790, a bill to authorize the Secretary of the Interior to enter into a contract or cooperative agreement with the Art Barn Association to assist in the preservation and interpretation of the Art Barn and Pierce Mill located in Rock Creek Park within the District of Columbia. As written, the bill would authorize the Secretary of the Interior to enter into a contract or cooperative agreement with the Art Barn Association to assist in the preservation and interpretation of the Art Barn and Pierce Mill located in Rock Creek Park within the District of Columbia.

The current operation of the Art Barn Association entails displaying the art of local artists. The Association operates under a cooperative agreement negotiated annually. In addition, $20,000 is provided to the Association by the National Park Service to maintain the structure for the purpose of displaying art and providing outreach programs for school children in the surrounding area.

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As contemplated by the bill's sponsor, the legislation would authorize the Art Barn Association to negotiate a contract with the National Park Service to expand their art show operation into Pierce Mill. The bill also intends to allow the Association to negotiate for an extended cooperative agreement rather than the current one-year agreement. Finally, and more importantly, the legislation expands the Association's operation into Pierce Mill. These intents, however, are not self-evident in the language of the bill itself. The only indication of the bill's purpose is expressed as follows: "...the Secretary is authorized to enter into contracts or cooperative agreements with the Art Barn Association to assist in the preservation and interpretation of the barn and mill."

NPCA is concerned that the historic integrity of Pierce Mill, the last surviving grist mill in the District of Columbia, could be damaged by this legislation. The mill, designated as a National Historic Landmark in 1969, was built between 1820 and 1829. According to the information prepared for its nomination as a National Historic Landmar, "The last extant grist mill in the District, Pierce Mill is the principal relic of the Pierce plantation and a unique symbol of the milling industry which once flourished along Rock Creek." (A copy of the nomination is attached for your information.)

NPCA believes that the significance of the mill and its operational features cannot be effectively interpreted to visitors if it is used principally to display art. It should be noted that the mill has been out of operation for the last three years. However, during the last several months thousands of dollars have been spent in putting the mill back into operation. In fact, operation is intended to begin in the next several months after a new miller is hired to operate the facility.

The preservation and operation of this mill is not consistent with the intent of this legislation. Further, NPCA believes that the significance of the mill and its operational features cannot be effectively interpreted to the public if it is used principally to display art. Considering that art displays must be carried out in dust-free situations, the operation of the mill itself could not be carried out, as dust is created in the milling process.

During the hearing the Director of the National Park Service suggested an amendment to the legislation: "to include a sunset provision to give us more flexibility in the future." We support that recommendation and offer a further amendment. Strike any reference to "Pierce Mill" or "mill" in the bill.

The mill will offer more to Rock Creek Park Visitors if it continues to function as it did in 1820 rather than allowing it to become a prop to display local art. For additional information on the mill, I've enclosed a description from a 1983 book entitled, Civil Engineering Landmarks of the Nation's Capital, prepared by the Committee on History and Heritage of the National Capital Section - American Society of Civil Engineers.

Thank you for including this statement in the hearing record of October 6, 1983.

Pierce Mill

During the early part of the 19th century, a number of mills were operating along the watercourse of Rock Creek. These mills were primarily involved in the production of flour. Pierce Mill in Rock Creek Park was constructed C.1820 by Isaac Pierce and is the only surviving grist mill in Washington.

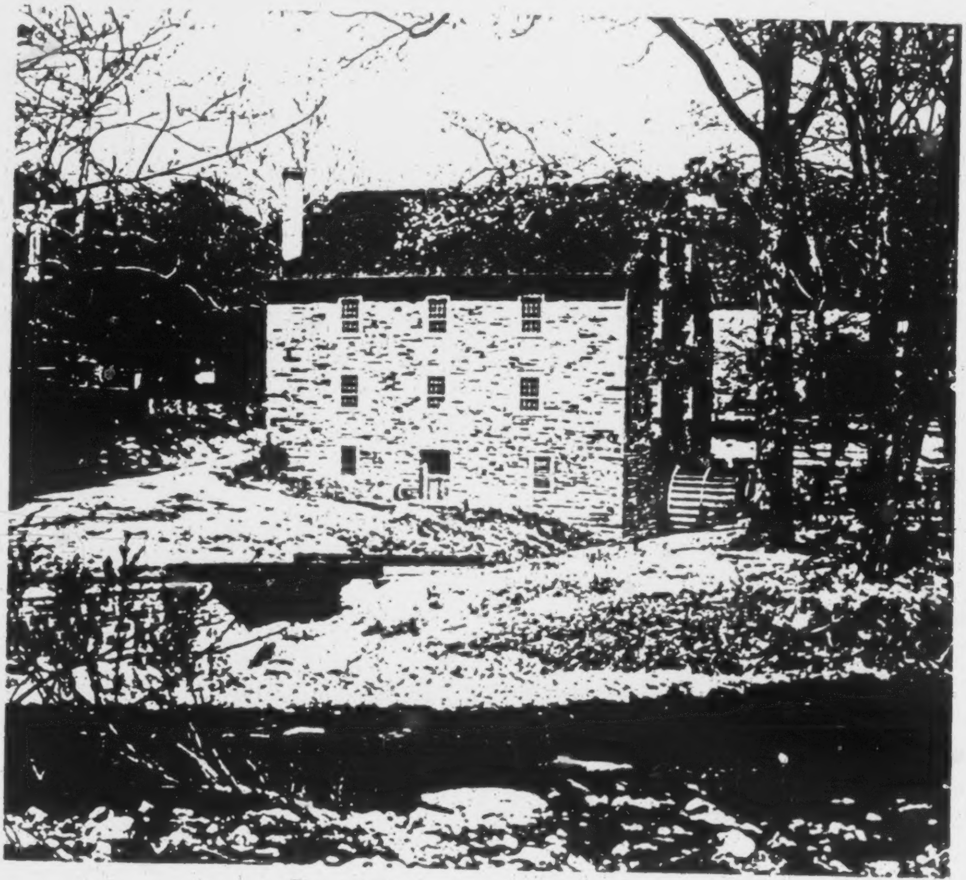
In 1794 Isaac Pierce acquired nearly 2000 acres of land extending from what is now Chevy Chase to the Zoo, broken only by about 49 acres of land belonging to the Blagden Mill property. When Pierce first settled on this tract of land, he found a two-story timber-framed mill near the site of the present stone structure. This mill was powered by an undershot wheel. Over the next 15 years, Pierce constructed a spring house (1801) and operated a saw mill. Around 1820, he decided to improve his flour milling operation and constructed a two-story mill building of blue granite. A timber crib dam diverted water into the stone lined head race and an undershot wheel continued to power the mill.

Evidently influenced by Cliver Evans' important work, "The Young Millwrights and Miller's Guide", Pierce's method of grinding grain into flour was highly mechanized and closely mirrored Evans' innovative techniques. The grain was carried to the mill by animal driven vehicles and placed onto a conveyor system. The wheel's main shaft turned wooden gears that translated rotary motion into the power that conveyed the grain through the many tasks of grinding, cleaning, drying, and grading the grain and the grist. These labor-saving, mechanized processes dramatically increased the mill's flour production.

Pierce Mill typically produced between 100 and 200 barrels of flour per day. Business at Pierce Mill flourished particularly between 1860 and 1870. This was considered the "boom" period in the history of the mill.

In 1876, a 40-in Loeffler turbine wheel supplanted an overshot wheel that in turn had replaced the original undershot wheel. Engineers had become increasingly interested in studying the efficiency of water-powered mechanisms and found that turbines were advantageous to the conventional water wheels in low head situations. Hence the mill was periodically improved as machinery wore out.

In 1897, an era came to an end when miller Alcibiader White reported "I was grinding a load of rye for a neighbor when the main shaft of the mill broke." The mill became the property of the federal government in 1890 and, following the breakdown of the shaft, the building served as a public teahouse. In 1934, Secretary of the Interior Harold Ickes suggested that Pierce Mill be restored as a working mill for visitors to the park. Two years later the mill resumed operation producing flour for several years before machinery broke down again. Finally, in 1967 a second restoration began and the mill was opened to the public in 1970. Although the present concrete dam no longer functions to divert the water into the mill race, the mill is functioning today in much the same way as it operated in 1820.



Pierce Mill on Rock Creek as seen today

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES
INVENTORY - NOMINATION FORM

(Type all entries – complete applicable sections)

STATE:	
COUNTY:	
FOR NPS USE ONLY	
ENTRY NUMBER	DATE
69-02-08-0002	3/24/69

SEE INSTRUCTIONS

1. NAME

COMMON: Peirce Mill

AND/OR HISTORIC: Pierce Mill

2. LOCATION

STREET AND NUMBER: N. W. corner, Tilden Street and Beach Drive, N. W. (Rock Creek Park)

CITY OR TOWN: Washington

STATE	CODE	COUNTY:	CODE
District of Columbia 11	~~08~~	District of Columbia	001

3. CLASSIFICATION

CATEGORY (Check One)	OWNERSHIP		STATUS	ACCESSIBLE TO THE PUBLIC
District ☐ Building ☒	Public ☒	Public Acquisition:	Occupied ☒	Yes:
Site ☐ Structure ☐	Private ☐	In Process ☐	Unoccupied ☐	Restricted ☒
Object ☐	Both ☐	Being Considered ☐	Preservation work in progress ☐	Unrestricted ☐
				No: ☐

PRESENT USE (Check One or More as Appropriate)

Agricultural ☐	Government ☒	Park ☒	Transportation ☐	Comments ☐
Commercial ☐	Industrial ☐	Private Residence ☐	Other (Specify) ☐	
Educational ☐	Military ☐	Religious ☐		
Entertainment ☐	Museum ☒	Scientific ☐		

4. OWNER OF PROPERTY

OWNERS NAME: United States of America

STREET AND NUMBER:

CITY OR TOWN:	STATE:	CODE

5. LOCATION OF LEGAL DESCRIPTION

COURTHOUSE, REGISTRY OF DEEDS, ETC: Recorder of Deeds

STREET AND NUMBER: 6th and D Streets, N. W.

CITY OR TOWN:	STATE	CODE
Washington	District of Columbia 11	08

APPROXIMATE ACREAGE OF NOMINATED PROPERTY: part of Rock Creek Park

6. REPRESENTATION IN EXISTING SURVEYS

TITLE OF SURVEY: Proposed District of Columbia Additions to the National Register of Historic Properties recommended by Joint Committee on Landmarks

DATE OF SURVEY: March 7, 1968 Federal ☒ State ☐ County ☐ Local ☐

DEPOSITORY FOR SURVEY RECORDS: National Capital Planning Commission

STREET AND NUMBER: 726 Jackson Place, N. W.

CITY OR TOWN:	STATE:	CODE
Washington	District of Columbia	08 11

STATE:	
COUNTY:	
FOR NPS USE ONLY	
ENTRY NUMBER	DATE
69-03-08-0002	3/24/69

7. DESCRIPTION

CONDITION	(Check One) Excellent ☒ Good ☐ Fair ☐ Deteriorated ☐ Ruins ☐ Unexposed ☐	
INTEGRITY	(Check One) Altered ☐ Unaltered ☒	(Check One) Moved ☐ Original Site ☒

DESCRIBE THE PRESENT AND ORIGINAL (If known) PHYSICAL APPEARANCE

Peirce Mill faces northwest at the N. W. corner of Tilden Street and Beach Drive, N. W., in Rock Creek Park. The mill is a rectangular, gabled-roof structure of simple design, with 2-1/2 stories in front sloping down to 3-1/2 stories in the rear. It is constructed of blue-grey and brown stone granite reportedly taken from a nearby quarry on Broad Branch Road. The building is in excellent condition; and with the exception of minor changes made during the 1934-36 restoration, it appears to be little altered from its original design. Unfortunately, the historical data upon which the PWA restoration was based have been misplaced, and we have no record of why these changes were made.

The mill is approached by a short path of stones, one of which is an old grinding stone. The simple, central board door, painted brown and two stone steps above grade, is flanked on either side by a 12/8 light double-hung window with wooden sash and sill painted white. The three windows of the second story are of the same design as are most of the other windows in the mill. Before the 1934-36 restoration, these windows were 2/2 light double-hung, with single shutters hung from the left. The rear of the mill is similar in design to the front but with the central door at the basement level and two full stories above. Prior to the PWA restoration, there were two gable-ended dormers evenly spaced along the roof, but these have been removed and the black shingle roof is obviously of later date.

The controversy over whether Peirce Mill was built in 1820 or 1829 has never been resolved. Francis Shoemaker and several other writers favor the 1820 date, although "BIP 1829" is inscribed in the south stone gable. The north gable is made of wood, however, and may predate the south gable and inscription. "BIP" may mean either "Betsy and Isaac Peirce" or "Built by Isaac Peirce."

Inside the mill, with the exception of a small office for the National Park Service guard on the first floor, each of the floors consists of only one room. The original timbers and board floors remain, and the walls are of the same stone as the exterior. There is a modern concrete floor in the basement. The milling machinery in the mill today was installed in 1934-36 and is a reproduction of the 1897 equipment. There are excellent illustrations in the mill of how this equipment worked. On the ground floor to the left of the entrance door are three mill stones. One of these, bought by Francis Shoemaker in 1880, is an imported stone intended for grinding wheat and flour. A second older domestic stone of flint was used for grinding corn. The third stone, imported from France, is the newest stone in the mill. When the National Park Service restores the mill to operation--or simulated operation--they will replace the present damaged water wheel dating from the 1934-36 restoration with a new overshot wooden wheel, and only one of the three stones will be activated. They will also rechannel the millrace to increase the water volume.

There are several other extant structures near the mill which were once part of the Peirce plantation. The small spring house northwest of the mill on Tilden Street where milk and butter were kept cool was built by Isaac Peirce in 1801. In 1811 he built a distillery southeast of the spring house, which later served as a barn and is now a privately owned residence. There is another stone barn several yards away from the mill.

SEE INSTRUCTIONS

PERIOD (Check One or More as Appropriate)

Pre-Columbian	☐	16th Century	☐	18th Century	☐	20th Century	☐
15th Century	☐	17th Century	☐	19th Century	☒		

SPECIFIC DATE(S) *(If Applicable and Known)* 1820 or 1829

AREAS OF SIGNIFICANCE *(Check One or More as Appropriate)*

Aboriginal		Education	☐	Political	☐	Urban Planning	☐
Prehistoric	☐	Engineering	☐	Religion/Philosophy	☐	Other (Specify)	☐
Historic	☐	Industry	☐	Science	☐		
Agriculture	☒	Invention	☐	Sculpture	☐		
Art	☐	Landscape Architecture	☐	Social/Humanitarian	☐		
Commerce	☒	Literature	☐	Theater	☐		
Communications	☐	Military	☐	Transportation	☐		
Conservation	☐	Music	☐				

STATEMENT OF SIGNIFICANCE *(Include Personages, Dates, Events, Etc.)*

The Joint Committee on Landmarks has designated Peirce Mill a Category II Landmark of importance which contributes significantly to the cultural heritage and visual beauty of the District of Columbia. The last extant grist mill in the District, Peirce Mill is the principal relic of the Peirce plantation and a unique symbol of the milling industry which once flourished along Rock Creek. It is now maintained by the National Park Service.

The property on which Peirce Mill stands was originally part of three English land patents--"Resurvey of New Seat" patented to George Read in 1747, "The Gift" patented to Samuel Beal in 1762, passed to William Deakins, and "Mill Seat" patented to James White in 1772. In 1794 William Deakins deeded "The Gift" and part of "Mill Seat" to Isaac Peirce (sometimes Pearce or Pierce). Born in Pennsylvania on April 9, 1756, Isaac Peirce was a resident of the Georgetown area by 1790. He married Betsy Cloud, the daughter of Abner Cloud, a pioneer miller in the region. They had nine children, many of whom became prominent citizens of Washington.

When Isaac acquired the Rock Creek property, there was already a two-story frame grist mill with an undershot wheel near the site of the present mill. By 1880 Isaac owned 1,200-2,000 acres of land along Rock Creek, extending from Chevy Chase to the present Zoo, interrupted only by the Blagden Mill property.

Isaac built the present mill either in 1820 or 1829. This mill was powered by an undershot wheel and two runner wheels until 1840 when these were replaced by an overshot one. Isaac probably never ran the mill himself. He was a millwright and farmer by occupation, not a miller. The mill was only one of many Peirce interests on the large plantation, and was operated for the family by various millers, who occupied a small frame house across the road from the mill. Although there is no record of exactly when each operated the mill, some of the Peirce millers were "Donald, Tennyson, Gaskins, Fleckkor, Donald again, Gaskins again, and the White Brothers."

Isaac died in 1841 leaving his estate, including the mill, to his fourth child, Abner Cloud Peirce, by occupation a stone mason, who continued to operate the plantation. Abner Peirce died in 1851, and his sister Abilgail's son, Peirce Shoemaker, inherited the estate. In 1876 Peirce Shoemaker replaced the old Peirce family home with a new house. It was during his tenure in the 1860's and 70's that business at the mill flourished remarkably. The installation in 1878 of the metal Loeffel

(Continued on Form 10-300a)

SEE INSTRUCTIONS

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

NATIONAL REGISTER OF HISTORIC PLACES
INVENTORY - NOMINATION FORM

(Continuation Sheet)

STATE	
COUNTY	
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ENTRY NUMBER	DATE
69-03-03-0002	3/24/69

(Number all entries)

8. Significance--Peirce Mill

turbine wheel replacing the wooden water wheel probably marks the arrival of Alcibiades and Charles White, who were the last commercial millers at Peirce Mill. By 1880, however, steel rollers began to replace mill stones, resulting in the mass production of cheap white flour and the eventual destruction of the American grist mill. The quantity of business at Peirce Mill declined rapidly in the 1880's.

Peirce Shomeaker died in 1891. In 1892 when the Government condemned 450 acres of land for inclusion in Rock Creek Park, Parcel 75 upon which Peirce Mill stands (15.612 acres) was purchased by the Government for $16,306.00. The White Brothers continued to operate the mill until 1897 when the main mill shaft broke. It was not repaired and all milling ceased.

Between 1934 and 1936 Peirce Mill was restored as a PWA project. The mill was again placed in operation on December 1, 1936, and ground corn meal and flour for use by Government cafeterias. It was closed again in 1958 because of the lack of trained millwrights and a decrease in the water volume in the mill race. Since then, it has been maintained solely as an historic site. The National Park Service hopes to restore the mill to operation by 1970.

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9. MAJOR BIBLIOGRAPHICAL REFERENCES

McCormick, Charles H. Milling in Rock Creek Park, General Background, Division of History, Office of Archaeology and Historic Preservation, National Park Service, U. S. Department of the Interior, November 1, 1967.

Historic American Buildings Survey, (DC-22) 19 exterior photos showing restoration (1934, 1935, 1936), 3 photocopies (1899, c. 1900), 7 data pages (1936).

Clark, Allen C. "The Old Mills," Records of the Columbia Historical Society, Vol. 31-32, Washington, D.C. Published by Society, 1930, pp. 81-115.

10. GEOGRAPHICAL DATA

LATITUDE AND LONGITUDE COORDINATES DEFINING A RECTANGLE LOCATING THE PROPERTY

CORNER	LATITUDE Degrees	LATITUDE Minutes	LATITUDE Seconds	LONGITUDE Degrees	LONGITUDE Minutes	LONGITUDE Seconds
NW	°	'	"	°	'	"
NE	°	'	"	°	'	"
SE	°	'	"	°	'	"
SW	°	'	"	°	'	"

OR

LATITUDE AND LONGITUDE COORDINATES DEFINING THE CENTER POINT OF A PROPERTY OF LESS THAN ONE ACRE

LATITUDE Degrees	LATITUDE Minutes	LATITUDE Seconds	LONGITUDE Degrees	LONGITUDE Minutes	LONGITUDE Seconds
38°	56'	24"	77°	03'	08"

LIST ALL STATES AND COUNTIES FOR PROPERTIES OVERLAPPING STATE OR COUNTY BOUNDARIES

STATE:	CODE	COUNTY:	CODE
STATE:	CODE	COUNTY:	CODE
STATE:	CODE	COUNTY:	CODE
STATE:	CODE	COUNTY:	CODE

11. FORM PREPARED BY

NAME AND TITLE: Nancy C. Taylor, Landmarks Historian

ORGANIZATION: National Capital Planning Commission

DATE: Feb. 27, 1969

STREET AND NUMBER: 726 Jackson Place, N. W.

CITY OR TOWN: Washington

STATE: District of Columbia

CODE: 08

12. STATE LIAISON OFFICER CERTIFICATION

As the designated State Liaison Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the National Park Service. The recommended level of significance of this nomination is:

National ☐ State ☒ Local ☐

Name Wm Fletcher

Title Deputy Mayor-Commissioner

Date March 24, 1969

NATIONAL REGISTER VERIFICATION

I hereby certify that this property is included in the National Register.

Ernest Allen Connally

Chief, Office of Archeology and Historic Preservation

Date March 24, 1969

ATTEST:

Keeper of The National Register

Date

SEE INSTRUCTIONS

STATEMENT OF ROSEMARIE CRAVEN, NATIONAL INHOLDERS ASSOCIATION

Ms. CRAVEN. I am Rosemarie Craven with the National Inholders Association, I would like to take this opportunity to thank the committee for allowing additional time for this.

I am speaking on S. 1705. I received numerous calls from individuals in the Fire Island area wishing to testify. I believe those will be submitted.

Senator HECHT. Thank you.

Ms. CRAVEN. We, additionally, are hoping for field hearings when this reaches the House.

In regard to two provisions of the bill, I would just summarize our concerns. We agree with the National Parks and Conservation Association in regard to the rollover fund. We have some concerns about the Park Service being in the real estate business and we feel that there needs to be some type of oversight, that this needs to be part of the appropriation process. That is an important aspect.

One of our concerns from the standpoint of the Park Service getting into real estate is that we might find them in a profile attempting to return a profit, buying at a minimum, selling at a maximum, with the landowner taking the loss, and pursuing a hard sell from that standpoint.

Now, GAO recommended in this case, in the case of this, there should be the right of first refusal to the previous owners. We note that this is not included in this bill. Again, this should be involved in the appropriations process.

In regard to the injunctive authority, we feel that there should be some sort of time frame on this or it could drag out endlessly and the Park Service could decide eventually not to purchase the property, and then the landowner has suffered a hardship. It is a question then of compensation for the time that has elapsed during the injunctive authority.

In addition to that, in 1981 GAO cited a need to amend the Federal standards and that there were problems there. That has not taken place. We have a concern about that. Many zoning ordinances have not been approved. Without that, all that we really are doing is reinforcing the Federal standards which GAO at that time said weren't acceptable.

I will submit further comments for the record.

Senator HECHT. Thank you very much.

Are there any other witnesses that wish to testify?

Mr. CURRY. Yes, Mr. Chairman.

Senator HECHT. Please identify yourself.

Mr. CURRY. Richard Curry, Fire Island Association.

Senator HECHT. Please sit down and give your statement.

STATEMENT OF RICHARD C. CURRY, FIRE ISLAND ASSOCIATION

Mr. CURRY. My name is Richard Curry. I represent the Fire Island Association.

This is an organization that represents the 17 communities within the Fire Island National Seashore. I will not take the committee's time this morning. We will be submitting our comments for the record. I just wanted to thank the committee for initiating the hearing on S. 1705. I think, in listening to the various witnesses this morning, it indicates to me that there is a general conceptual consensus on what needs to be done and I look forward to using the interim here to be able to provide the committee with some very specific recommendations on how we can proceed to provide the relief for a real problem that exists on the Fire Island National Seashore.

Thank you, Mr. Chairman.

Senator HECHT. Thank you. Please submit your testimony for the record. There were conflicting markups this morning on the committees. Unfortunately, a lot of the members were unable to attend. Is there anyone else that wishes to speak?

[No response.]

Senator HECHT. The subcommittee is adjourned.

[Whereupon, at 11:15 a.m., the hearing was adjourned.]

APPENDIX

Additional Material Submitted for the Record

TESTIMONY BY SENATOR CARL LEVIN
ON S. 1868

I am proud to be a cosponsor of S. 1868 and welcome the opportunity to discuss the merits of this proposed legislation that increases the budget ceiling for new acquisitions at Sleeping Bear Dune National Lakeshore. During the 97th Congress, I devoted a great deal of time to trying to settle some of the controversies surrounding this beautiful park. Although the House passed legislation adding Miller Hill to the Lakeshore and raising the ceiling level to accommodate this increase in the size of the park, the version passed by the Senate did raise the ceiling level to the amount necessary for acquisition of Miller Hill.

Unless we increase the ceiling, we are making a mockery of the compromises reached last year, compromises that were necessary if we were to amend the statute establishing the Sleeping Bear Dune National Lakeshore. As the Committee knows, there are often conflicts between landowners, inholders, local governments, and environmental groups concerning the establishment and management of national parks. Sleeping Bear Dune was no exception. H.R. 3787 was the result of many compromises and represented the product of many hours of negotiation. S. 1868 completes business left unfinished by the 97th Congress. We are now three-quarters of the way -- the Park Service is authorized to purchase Miller Hill, the owner of Miller Hill wants to sell his property to the Park Service, and it has been accepted that Miller Hill will be included within the boundaries of Sleeping Bear Dune National Lakeshore. S. 1868 simply raises the ceiling authorization so that Miller Hill can be purchased, as authorized by P.L. 97-361.

S. 1868 and H.R.1213 both would raise the ceiling authorization at Sleeping Bear Dune National Lakeshore. Although S. 1868 raises the authorization ceiling by almost $18 million, if the Senate passes H.R1213, which I understand is expected to pass soon, only $2 million more than the amount authorized in H.R.1213 would be required to assure that acquisition ceilings match the value of properties authorized and expected to be purchased.

Of all the areas near the park that were considered as possible candidates for inclusion in the park, Miller Hill was considered to be the finest remaining scenic area left outside the park. In addition, it was threatened by possible development that would have changed its character irreversibly. Also, visitors to Sleeping Bear can see Miller Hill from within the park so that any development would have affected the quality of the park.

The current land acquisition program is illogical. Present law calls for the inclusion of Miller Hill in Sleeping Bear Dune National Lakeshore -- but its acquisition cannot be funded because of the inadequate acquisition ceiling. This does not make any sense. Because of this anomaly, the current owner of Miller Hill is left holding the bag, which I do not believe is fair. In addition, the current system is impractical and expensive. By delaying acquisition until after courts settle condemnation cases, the Park Service pays more than it would have originally and park acquisitions are needlessly delayed. This system also lessens the public's respect for the government because our constituents see the folly of such delays.

In closing, I would like the thank the Chairman of the Public Lands and Reserved Water Subcommittee for holding this hearing. I look forward to working with him and with the other members of the Subcommittee in the hopes of resolving the problems of Sleeping Bear Dune National Lakeshore.

STATEMENT OF
THE HONORABLE DONALD W. RIEGLE, JR.
BEFORE THE PUBLIC LANDS SUBCOMMITTEE OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
OCTOBER 6, 1983

Mr. Chairman, members of the Subcommittee, I would like to thank you for this opportunity to submit a statement in support of S. 1868, which would raise the ceiling authorization for land acquisition at Sleeping Bear Dunes National Lakeshore by $2 million. The intent of S. 1868 is only to increase the ceiling by $2 million, which is the outside estimate of needs to acquire the remaining parcels of land authorized by P.L. 97-361.

In a sense, S. 1868 is the fulfillment of an agreement that was reached last year between the 89 inholders at Sleeping Bear Dunes, who faced immediate eviction, and environmental groups, who were anxious to acquire the remaining parcels of land. Last years' legislation did extend the leases of the inholders, allowing them to remain on their property until 1997. The leases had expired, and eviction was imminent. That same legislation authorized the acquistion of areas on Miller Hill and in an area known as the "Bog". In addition, the legislation deleted from the park a controversial scenic corridor.

P.L. 97-361 was carefully balanced between the interests of the inholders and the concerns of the environmental groups. It was supported by the Park Service, and was approved by the Congress with full bi-partisan support in both Houses. The leases have been extended, as promised, but there has been no action to increase the ceiling to accomodate the new areas that have been authorized for acquisition.

Mr. Chairman, it seems only reasonable that we increase the ceiling now, rather than waiting for some undefinable date in the future to complete the additional purchases. The revised Land Protection Plan, completed in July of this year, states very clearly the intention of the Park Service to acquire these properties. Current landowners in these areas, and one in particular on Miller Hill, are holding large parcels of land with absolutely no means of disposing of their property. They are "willing sellers", in every sense of the word, but there are no "willing buyers".

I am enclosing a copy of a portion of the Land Protection Plan's recommendations for Miller Hill. Private landowners are prohibited from: "clearcutting; development or construction that is visible from the lakeshore, or potential development sites on Miller Hill; any action that produces clear documentable damage to the scenic resources of the lakeshore". It is impossible for any landowner to do anything with the land, private sales are out of the question, the interest is running, yet unless we take this action there is no prospect that the Park Service will make any purchases.

The administration has given conflicting signals concerning acquisition at Sleeping Bear Dunes. As I stated, they concurred in the passage of P.L. 97-361. They have indicated their opposition, however, to any ceiling increases for purchases on Miller Hill or The Bog, yet they have conveyed to a constituent of mine the clear impression that Secretary Watt does support land acquisition at Sleeping Bear Dunes. I would like to include in the record a letter to Mr. Charles T. Doyle, of Ada, Michigan written by Mr. Frederick N. Kheddouri, Associate Director of the Office of Management and Budget. In that letter, dated July 26, 1983, Mr. Kheddouri states several reasons why it is currently impossible to acquire any property at Sleeping Bear Dunes. Mr. Kheddouri includes, however, a postscript which reads: "I spoke to Secretary Watt about getting Congress to provide Funds in the 1984 appropriations bill, which is now pending in the Senate. He is planning to reaffirm the President's support for land acquisition at Sleeping Bear Dunes, but as you know, the final decision is up to the Congress".

Mr. Chairman, there are many compelling reasons to approve this legislation. It will honor the commitment we made last year; it will enable the Park Service to purchase properties that will only increase in price the longer we wait, and most importantly, it will add to the nation's park system several small areas that are unique in their features, and which provide all of us, and generations to come an example of Nature's awesome power and beauty.

Thank you for this opportunity to make this statement in support of S. 1868. I appreciate your willingness to schedule it for hearings in such a prompt fashion.

III. Management Plans and Site-Specific Considerations

A.Miller Hill Resource Preservation Area

The enabling Act, as amended, authorizes the inclusion of approximately 600 acres on Miller Hill within the lakeshore "for preservation of scenic values in such lands." The lakeshore's general management plan (GMP) calls for the protection of scenic vistas and the scenic values of the slopes and ridges. The GMP also envisions trail and scenic overlook development on Miller Hill. Proposed development, as well as tract boundaries and other site features, are depicted on the accompanying map.

Management objectives for Miller Hill are to protect scenic values and provide for visitor enjoyment of these values. Protection of scenic values involves mainly the preservation of the views of Miller Hill--an attractive, undeveloped backdrop from various points in the lakeshore. Providing for visitor enjoyment involves, to the extent possible considering landownership patterns, allowing for use which will permit visitors to appreciate the spectacular views of the lakeshore and environs available from Miller Hill.

Today, Miller Hill remains essentially undeveloped. There is one residence, which is under retention until 1988. This property, as well as associated land, over which use and occupancy rights were not retained, were acquired by the federal government in an out-of-court settlement of inverse condemnation litigation. Approximately 240 acres of land has been subdivided for development purposes into approximately 10 acre tracts.

Certain types of private use would be compatible with the management plans for Miller Hill. These include:

- Selective controlled timber harvesting
- Maple sugar bush operations
- Development for non-consumptive recreational purposes where extensive landscape and/or vegetative manipulations are not planned (e.g., cross-country ski trails with warming huts.)
- Hunting in accordance with Michigan Law
- Construction of single-family residences where the end products, including related access improvements, are not visible from the lakeshore or other public areas such as roads and lakes and potential visitor use sites on Miller Hill.
- Retention as undeveloped land

Private uses which would not be compatible include:

- Mining or mineral exploration involving surface disturbance
- Clearcutting
- Development or construction which is visible from the lakeshore or potential development sites on Miller Hill
- Any action which produces clear, documentable damage to the scenic, soil, or water resources of the lakeshore
- Creation of hazards which endanger park visitors or wildlife

B. Bow Lakes Resource Preservation Area

The 975 acres comprising the Bow Lakes area were included within the lakeshore to be used "for educational purposes and for research and interpretation of natural features." (1982 amendment). The GMP states that inclusion of the Bow Lakes area:

> "...will add to the lakeshore excellent examples of ice block lakes and long forested valleys that were formed when great blocks of ice melted. The area contains an outstanding example of a floating leatherleaf bog and prime examples of plant succession, including the bog, an open marl lake, meadows, and forest. It presents excellent opportunities for environmental education...."

The GMP calls for limited development to include hiking trails, a handicap-accessible trail and overlook, a small parking area, and a vault toilet.

Proposed development, as well as tract boundaries and other site features, are depicted on the accompanying map.

Management objectives for the Bow Lakes are to protect the outstanding natural features and to allow for at least limited use for scientific, educational/interpretive, and research purposes.

The Bow Lakes and Bog are in an essentially undeveloped glacial valley containing only some old logging roads and one abandoned farmstead. Development potential is severely limited by soil, slope, and moisture conditions which make major construction infeasible.

On the valley rim, immature hardwood forest is intermixed with agriculture and its associated residential development. A regional high school and elementary school is located just north of the lakeshore boundary. Little of the rim is within the boundary; that which is, is forested, with some timber-stand improvement and firewood cutting occurring.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

JUL 26 1983

Mr. Charles E. Doyle
940 Sargent Southeast
Ada, Michigan 49301

Dear Mr. Doyle:

The President has asked me to answer your June 29 letter to him concerning your property at Sleeping Bear Dunes National Lakeshore.

Your letter is direct and poignant. Unfortunately, there seems to be little likelihood of an immediate resolution of the problem facing you.

The facts as presented in your letter are essentially accurate. I must point out, however, that no discretionary fund exists which is unilaterally available to the Department of the Interior for acquisition of your property or anybody else's. Congress must appropriate funds for National Park Service land acquisitions at each authorized area within the national park system.

For fiscal years 1983 and 1984, the Administration requested funds for acquisitions at Sleeping Bear Dunes. Congress in 1983 disapproved the request, and the prospect for 1984 looks unfavorable as well. Until such time as the Congress approves funds for Sleeping Bear Dunes, the National Park Service is effectively blocked from acquiring your property.

When and if funds become available, the first priority will be payment of mandatory court awards from pending condemnation cases at Sleeping Bear Dunes. Discretionary acquisitions on a willing-seller basis of property like yours would come next, pursuant to the national lakeshore's land protection plan tentatively scheduled for final approval in September.

As you know, the plan will identify what interest in land, if any, needs to be acquired at a given tract within the national lakeshore, in order to provide for resource protection and for public use. The plan will also be used to establish future acquisition priorities.

The Department of the Interior has made no acquisition decisions concerning your property and, as I stated previously, no funds are currently available for land acquisition at Sleeping Bear Dunes. Future requests for such funds will be made on the basis of the approved land protection plan.

I am genuinely sorry that my response for the President cannot be more positive at the present time.

Sincerely,

Frederick N. Khedouri
Associate Director
for Natural Resources,
Energy and Science

Further note:

I spoke to Secretary Watt about getting Congress to provide funds in the 1989 appropriation bill, which is now pending in the Senate. He is planning to reaffirm the President's support for land acquisition at Sugar Bear Dunes, but as you know, the final decision is up to the Congress.

STATEMENT BY SENATOR STROM THURMOND (R-S.C.) BEFORE THE PUBLIC LANDS AND RESERVED WATER SUBCOMMITTEE OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES REFERENCE S. 1790, A BILL TO ASSIST IN THE PRESERVATION AND INTERPRETATION OF THE ART BARN AND PIERCE MILL LOCATED IN ROCK CREEK PARK. OCTOBER 6, 1983.

MR. PRESIDENT:

I am pleased to have this opportunity to testify before you and the other distinguished members of the Public Lands and Reserved Water Subcommittee, in support of S.1790, a bill I introduced on August 4, 1983. This measure would allow the Secretary of the Interior to enter into a contract or cooperative agreement with the Art Barn Association to assist in the use of ~~the~~ barn and mill as a gallery for displaying art work.

Mr. Chairman, the Art Barn and Pierce Mill are historic structures located within the natural, scenic beauty of Rock Creek Park within the District of Columbia. During the past decade, the Art Barn has been open to the public, on an admission-free basis, as a gallery showcasing the work of local artists. The beautiful geographic setting, coupled with the rustic style of the building, have been invaluable assets in making contemporary works of art accessible to residents of, and visitors to, our Nation's capital.

During these years, the Art Barn has been operated by the Art Barn Association, which is a group of dedicated, hard-working and civic-minded citizens of the Washington, D.C. area.

In accordance with the annual cooperative agreements between the Art Barn Association and the National Park Service, the Association provides the management, scheduling, and supervision of exhibitions, while the Park Service maintains the building and grounds. The legislation which I have introduced will authorize the execution of such contracts to cover both the Barn and the adjacent Pierce Mill, and would permit these contracts to cover time periods greater than one year.

Mr. Chairman, through enactment of this measure, the Art Barn Association ~~will be~~ better able to bring quality works of art to the public. The additional space provided by Pierce Mill naturally expands the potential for the gallery, and the extended contract period will unquestionably assist in scheduling of events, while reducing administrative tasks.

Mr. Chairman, I commend this measure to the distinguished members of the Subcommittee. This is a prime example of the results which can be obtained by cooperation between the government and civic-minded volunteers. This is a noteworthy project, and I commend the members of the Art Barn Association for their dedication and efforts. I hope the Subcommittee will act favorably on this measure in order that it may soon be available for consideration by the Senate.

Mr. Chairman, I have a letter in support of this measure, which the President of the Art Barn Association, Mrs. Susan R. Lewis, has asked me to present for inclusion in the record of this hearing. I ask unanimous consent that it be so included.

Mr. Chairman, thank you again for allowing me to testify on this matter of high civic and cultural concern.

THE ART BARN ASSOCIATION

Mrs. John A. Logan, Founder
Mrs. Susan R. Lewis, President
Mrs. Karen Montgomery, Executive Director

2401 Tilden St., N.W., Rock Creek Park,
Washington, D.C. 20008
Telephone 426-6719

October 5, 1983

The Honorable Malcolm Wallop
Chairman
Public Lands and Reserved Water Subcommittee
Senate Energy and Natural Resources Committee
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

As President of the Art Barn Association, I want to express appreciation for the consideration your committee is giving S.1790, the bill introduced by Senator Thurmond. This legislation is important to the future of the Art Barn and I urge the committee to recommend its favorable passage by the Senate.

The Art Barn is located in Rock Creek Park and was once the carriage house of the 150 year old Peirce Mill Plantation. The building is only a few steps from the restored and still operational Peirce Mill.

As you may be aware, gallery space for artists is difficult to find in many urban areas. Although Washington has several national museums, local Washington artists have limited opportunities to exhibit their art without charge.

The Association pioneered in establishing the Art Barn as the first permanent facility in Washington where local professional artists could display their works in rotating exhibits throughout the year. No exhibition fee is charged. Over the years, hundreds of artists have displayed their art at the Art Barn.

This has been made possible by the generous cooperation and support we have received from the National Park Service, which maintains the facility for us. Our working arrangement is not only a cooperative one, but its effectiveness is now time-proven.

The Association, however, depends significantly upon volunteers who contribute time and financial support. The requirement to annually renew our arrangement with the Park Service is an unnecessary burden. This legislation would eliminate that burden and allow us to devote more time to the promotion of our primary purpose.

We are proud that the Art Barn history has demonstrated that civic and government support for the arts can result in effective cooperative ventures which benefit the community and serve to promote the creative spirit so vital to our American tradition.

On behalf of the Art Barn Association, and the hundreds of professional artists who have exhibited their art at our facility, or will do so in the future, we urge you to pass S.1790.

I would like to request that this letter be made part of the hearing record on S.1790.

Sincerely,

Susan R Lewis

Susan R. Lewis
President

SRL:ma

STATEMENT OF SENATOR SAM NUNN
BEFORE THE SENATE SUBCOMMITTEE ON
PUBLIC LANDS AND RESERVED WATER
IN SUPPORT OF S. 806

Mr. Chairman, I would like to express my appreciation to you for scheduling this hearing on S. 806. As you know, my colleague from Georgia, Senator Mattingly, and I introduced this bill on March 15 of this year in order to provide a plan to reimburse the Okefenokee Rural Electric Membership Corporation for the costs which it incurred in installing electrical service to the Cumberland Island National Seashore.

The Cumberland Island is a beautiful and unspoiled barrier island separated from the coast of Georgia by the intercoastal waterway and marsh land. Because of this physical separation, the people living on Cumberland Island did not have central station electric power provided until 1967. During that year, the Okefenokee REMC completed the construction of the necessary power lines and began providing this service. Although electric lines crossing the marshes were built on overhead poles, all lines on the island itself were placed underground. Placing these lines underground cost considerably more than conventional overhead lines would have cost. The Okefenokee REMC made a far-sighted decision to incur the additional cost in order to preserve the natural beauty of the island for future generations without marring it with unsightly power lines.

When these underground lines were constructed, it was obvious that their cost could not be justified economically on the basis of electric load at that time. However, the Okefenokee REMC decided to incur the cost for two additional reasons beyond the environmental considerations. First, was the feeling of a duty as a rural co-op to provide service to all homes in their area that need it. Second, was the reasonable expectation of increased load demand due to further private development. However, further private development was precluded when Congress established the Cumberland Island National Seashore in 1972. Since then the National Park Service has acquired title or control of the majority of the land on the island. The Park Service plans to place the entire island under their control as soon as possible. This will cause a further decrease in electric load as more and more private property comes under the jurisdiction of the NPS and electric services are terminated.

Besides the cost of construction, the Okefenokee REMC has continued to incur costs for operation and maintenance, which has resulted in substantial monetary losses. There is little chance that these costs will decrease, and it is more likely that they will instead increase. It is only fair that the Okefenokee REMC be compensated for its costs as other property owners have been compensated for theirs. Since the NPS intends to acquire the remaining private lands on the island, there is no reason to believe that these lines will ever become self supporting. Therefore, other members of the Okefenokee system will have to continue to subsidize service to the island. Even if the full capital costs are reimbursed, the Okefenokee REMC will still be faced with the ongoing operation and maintenance expenses for some time to come.

In spite of its costs and losses, the Okefenokee REMC has continued to provide dependable service, even in the face of having to cross several miles of open water during bad weather and the necessity of keeping a truck and extra cables and other spare parts on the island at all times. Mr. Chairman, S. 806 is a reasonable proposal to compensate the Okefenokee REMC for a situation beyond its control. I appreciate your consideration of my testimony, and I hope that your committee will favorably report this legislation to the full Senate for consideration.

Statement of

SENATOR MACK MATTINGLY

Thursday, October 6, 1983

Before the

Subcommittee on Public Lands and Reserved Water

of the

Committee on Energy and Natural Resources

S. 806

A Bill to provide for a plan to reimburse the Okefenokee Rural Electric Membership Corporation for costs incurred in installing electrical service to the Cumberland Island National Seashore.

Mack Mattingly

MR. CHAIRMAN:

CUMBERLAND ISLAND NATIONAL SEASHORE WAS ESTABLISHED IN 1972 TO PROVIDE FOR PUBLIC OUTDOOR RECREATION USE AND ENJOYMENT. THIS ACTION WAS FOLLOWED LAST YEAR BY THE DESIGNATION OF MOST OF THE ISLAND AS A DESIGNATED WILDERNESS AREA FOR THE PURPOSE OF FURTHER PROTECTING THIS BEAUTIFUL NATURAL RESOURCE. CUMBERLAND ISLAND IS IN THE SERVICE AREA OF THE OKEFENOKEE RURAL ELECTRIC MEMBERSHIP CORPORATION WHICH, IN 1967, PROVIDED THE FIRST CENTRAL STATION ELECTRIC POWER FOR THE RESIDENTS OF THE ISLAND.

AT THE TIME THE DECISION WAS MADE TO PROVIDE ELECTRICITY TO THE ISLAND, IT WAS COMPLETELY REASONABLE TO ASSUME THAT CUMBERLAND WOULD FOLLOW THE TYPICAL PATTERN OF SUBDIVISION AND DEVELOPMENT AND COMMERCIALIZATION. THE CAPITAL INVESTMENT MADE BY OKEFENOKEE WOULD ORDINARILY HAVE BEEN A WISE AND PRUDENT BUSINESS DECISION. BY 1972, HOWEVER, THE RULES HAD BEGUN TO CHANGE. AS LOCAL RESIDENTS, THE PUBLIC IN GENERAL AND THE U.S. CONGRESS IN PARTICULAR BEGAN TO REALIZE THAT ACTION SHOULD BE TAKEN TO PRESERVE NATURAL SCENIC RESOURCES, CUMBERLAND ISLAND BECAME A PRIME EXAMPLE OF THE TYPE OF SUCH AREAS THAT SHOULD BE WITHDRAWN FROM DEVELOPMENT AND PROTECTED FOR FUTURE GENERATIONS TO ENJOY IN THEIR NATURAL STATE. SINCE 1972, THE FEDERAL GOVERNMENT HAS ACQUIRED THE VAST MAJORITY OF ALL PROPERTY ON THE ISLAND. EVENTUALLY THERE WILL BE NO REMAINING PRIVATE RESIDENCES LEFT ON THE ISLAND, AND THE ONLY ELECTRIC CUSTOMER WILL BE THE PARK SERVICE.

THE LEGAL PRINCIPAL OF "INVERSE CONDEMNATION" HAS BEEN RECOGNIZED BY EVERY JURISDICTION IN THE UNITED STATES. SIMPLY

STATED, INVERSE CONDEMNATION REFERS TO A GOVERNMENTAL ACTION WHICH INDIRECTLY AMOUNTS TO A "TAKING" OF PRIVATE PROPERTY RIGHTS (OR VALUES) FOR A PUBLIC PURPOSE. IN THE PRESENT CASE, THE GOVERNMENT DID NOT DIRECTLY CONDEMN OKEFENOKEE'S EQUIPMENT AND POWER TRANSMISSION LINES. BUT THROUGH THE ACT OF PREVENTING FUTURE DEVELOPMENT, WE HAVE ENSURED THAT THERE WILL BE NO WAY POSSIBLE FOR THE EARLIER CAPITAL INVESTMENT TO EVER PAY FOR ITSELF. THEREFORE, I FEEL IT IS ONLY EQUITABLE THAT THE GOVERNMENT ARRIVE AT A FAIR COMPENSATION TO THE OKEFENOKEE RURAL ELECTRIC MEMBERSHIP CORPORATION FOR THIS "TAKING" OF THEIR PROPERTY AS REQUIRED BY THE CONSTITUTION. I DO NOT PRETEND TO BE ABLE TO PLACE AN EXACT FIGURE ON THIS AMOUNT, HOWEVER, I AM CERTAIN THAT A FAIR AND INDEPENDENT APPRAISAL CAN BE MADE WHICH WILL ENABLE THE DEPARTMENT OF THE INTERIOR TO JUSTLY COMPENSATE THE COMPANY AND ITS CO-OPERATIVE SUBSCRIBERS.

I THANK YOU, MR. CHAIRMAN, FOR THIS OPPORTUNITY TO PRESENT MY SENTIMENTS ON THIS MATTER. I ASK THAT YOU AND THE OTHER MEMBERS OF THIS SUBCOMMITTEE GIVE THIS YOUR FAVORABLE CONSIDERATION.

Statement on S. 1547 by

William L. Armstrong

Before the Public Lands and Reserved Water Subcommittee

Of the Senate Energy and Natural Resources Committee

October 6, 1983

Mr. Chairman, I am grateful for the opportunity to speak briefly in support of S. 1547. I introduced this measure as a straight-forward solution to a simple but very serious problem, and I would like to take just a moment to outline the situation my bill is designed to correct.

Olathe was founded in 1882 and incorporated in 1907. Because of a typhoid outbreak four years later, the Town sought to buy land at fair market value to build a domestic water system that would be a secure and dependable supply of drinking water. Olathe subsequently acquired title to 640 acres of federal land by Act of Congress in 1919 and, over the years, has invested $540,000 in improvements to the property -- including reservoirs, pipelines, diversion headgates and roads -- most of which were built by hand in extremely rugged terrain.

The system has served the community well but now requires substantial further expenditure to update and maintain the aging pipeline. Several hundred thousand dollars may be required. Due to other expensive capital investments and the Town's legal debt limits, Olathe has no funds available for this purpose, no substantial remaining bonding capacity and no assets that would yield sufficient collateral for an adequate loan. I should note here that Olathe is a rural community of 1,250 people, which has doubled its population in the last ten years, and this has greatly complicated its financial problems.

The Town would like to pledge its property rights in the reservoirs and its water rights as collateral for a loan to do the necessary maintenance and modernization work. Unfortunately, the 1919 Act provided that the land will revert to the United States if sold or used for any purpose other than supply of municipal water. Paradoxically, this reverter makes the land ineligible for use as collateral, even though Olathe has no intention to use the land for anything other than securing its water supply.

Unless this problem is quickly resolved, the Town of Olathe faces the very serious prospect of losing its municipal water supply altogether. Its water rights are only "storage decrees;" that is, the Town is only entitled to store surplus water during the spring runoff. Obviously, without a functioning storage and distribution facility, these rights are worthless and will legally fall through disuse to junior appropriators. Moreover, the Town's other water supply -- an exchange contract with the Uncompahgre Valley Water Users Association -- will also be turned off if it no longer has any water to exchange.

The measure being considered today will allow the Town to mortgage the property for public purposes directly related to the maintenance and modernization of its water system. The proceeds of any other sale or alienation of the property during the next ten years would still have to be paid to the United States. An additional benefit of loosening this restriction of uses is that the Town would be able to develop the reservoirs for recreational purposes. Colorado has a new lottery program for recreational development and Olathe expects to receive up to $10,000 annually from this fund. If the use restrictions of the 1919 Act are lifted, these monies could be used to develop a popular recreational resource for this rural community.

For these reasons, Mr. Chairman, I urge the favorable consideration of this measure by the Committee and hope that it can be promptly reported to the Senate.

STATEMENT BY SENATOR MURKOWSKI IN SUPPORT OF S. 1688, A BILL TO AMEND THE ACT OF OCTOBER 18, 1972, TO MODIFY THE AUTHORIZATION OF APPROPRIATIONS FOR SITKA NATIONAL HISTORICAL PARK, ALASKA.

Mr. Chairman, I want to thank you for addressing S.1688 in today's hearing.

S. 1688 amends the Act of October 18, 1972, which authorized appropriations for development and restoration at the Sitka National Historical Park in Sitka, Alaska. I believe it is important that we adopt S. 1688 without delay. The bill would remove the statutory ceiling on development expenditures (now $1,571,000) and would authorize appropriation of such sums as may be necessary up to $6,000,000. Without the additional appropriations this bill makes possible, construction, development and restoration at the Park will cease, and we will be faced with the expense and disruption associated with a one or two year delay.

The appropriations made pursuant to the Act of October 18, 1972, as amended by the Act of November 10, 1978, have been used for such park projects as sewage system modifications and fire suppression work. Should S. 1688 be enacted, plans for the development of exhibits and audiovisual displays and for a riverbank erosion control project could be realized. Cost estimates for these projects are about $2 million, and the costs for completing projects already begun will run around $1 million.

The Sitka National Historical Park is visited by some 100,000 tourists each year. The Park comprises the site where the Tlingit Indians made their last stand against the Russian invaders in 1804. It also contains the Russian Bishop's House, the oldest, most nearly intact structure from the Russian American period in North America. 75-80% of the original materials remain in their original location in the building.

The Russian Bishop's House dates from 1842. It was acquired by the Park Service in 1974. Extensive restoration was necessary. The house needed a new roof, new interior walls, plumbing, wiring, and reproduction of the original wallpaper and decorations. Despite serious delays in deliveries of materials, the Park Service has managed to complete all but a small part of the work.

Mr. Chairman, enactment of this bill would precipitate neither a spending free-for-all nor the invention of new projects. It would merely allow final restoration of the Park within a reasonable amount of time. In fact, if funding is not provided for the erosion control project, the fort itself is in extreme danger of washing away in the heavy rains and high winds of the Sitka winter.

Once again, I want to thank you, Mr. Chairman, for considering this measure in this hearing.

STATEMENT BY
SENATOR TED STEVENS ON S.1688
Thursday, Oct. 6
1983

The Sitka National Historical Park is a monument not only to Sitka's unique Russian history, but to our nation's careful attention to the preservation of the many traditions that contribute to our culture. For almost ten years the National Park Service has been at work in Sitka, and the bill before us today will enable them to complete this important project.

The Sitka National Historical Park encompasses several sites of great significance to the community's history as the center of Russian America, as the Russian settlements in Alaska were known. The park complements other restored monuments in the community, and enhances the continuing efforts of Sitka residents to keep the Russian traditions alive. Every year now thousands of tourists visit Sitka and can visit St Michael's Cathedral, recently restored through the efforts of the local community and private donors. They will be entertained by performances of Russian traditional music and dances, and see the Russian Bishops House and the site of the Tlingit Indians' last stand against the Russians--these last two items at the Sitka National Historical Park. The Park is only one piece of the preservation action in Sitka--community spirit and State and local committment are others. The story of Russian American, and its continuation in the ongoing existance of the Sitka Russian community, is a special part of our country's history. This bill will help us complete an important step in ensuring the preservation of this heritage.

Ted Stevens

Alfonse D'Amato

STATEMENT BY

SENATOR ALFONSE D'AMATO

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER

10/6/83

MR. CHAIRMAN, MY DISTINGUISHED COLLEAGUE, SENATOR MOYNIHAN, AND I INTRODUCED THE LEGISLATION UNDER CONSIDERATION BEFORE THE COMMITTEE TODAY ONLY AFTER A GREAT DEAL OF THOUGHT. THIS LEGISLATION WILL PERFECT PUBLIC LAW 88-587, ENACTED IN 1964, TO PRESERVE THE FRAGILE BEACHES, SAND DUNES, AND OTHER FEATURES OF COASTAL SUFFOLK COUNTY FOR FUTURE GENERATIONS. THIS BILL WOULD AMEND THAT ACT TO PERFECT ZONING ENFORCEMENT MECHANISMS CURRENTLY IN USE.

UNDER THIS LEGISLATION, THE SECRETARY WOULD HAVE TO RESELL, WITH DEED RESTRICTIONS, ANY PROPERTY HE CONDEMNED BECAUSE IT WAS BEING USED IN A MANNER THAT WOULD EITHER

VIOLATE LOCAL ZONING OR HARM THE SEASHORE. WHEN A CONDEMNED PIECE OF PROPERTY IS THEN RESOLD, THE PROCEEDS WOULD GO INTO A SPECIAL FUND WHICH THE SECRETARY COULD USE ONLY TO PURCHASE OTHER PROPERTIES THAT WERE BEING DEVELOPED IN A MANNER INCONSISTENT WITH THE SEASHORE ACT.

ADDITIONALLY, THE NATIONAL PARK SERVICE WOULD NOT HAVE TO NOTIFY LANDOWNERS THAT THEIR PROPERTY WAS SUBJECT TO CONDEMNATION SIMPLY BECAUSE THEY WERE GRANTED A VARIANCE FROM LOCAL ZONING. NOTIFICATION WOULD ONLY BE GIVEN IN THOSE CASES IN WHICH THE VARIANCE ALSO VIOLATED THE SECRETARY'S REGULATIONS THAT ARE CALLED FOR IN THE SEASHORE ACT. AND FINALLY, THE SECRETARY SPECIFICALLY MUST BE AUTHORIZED TO SEEK A TEMPORARY RESTRAINING ORDER ID ORDER TO HALT ILLEGAL DEVELOPMENT (IN VIOLATION OF LOCAL ZONING OR DETRIMENTAL TO THE SEASHORE) WHILE HE IS IN THE PROCESS OF CONDEMNING THE PROPERTY.

THIS LEGISLATION, MR. CHAIRMAN, IS NOT DESIGNED TO PRECLUDE ALL DEVELOPMENT ON THE SEASHORE. WHEN CONGRESS ORIGINALLY PASSED THE FIRE ISLAND NATIONAL SEASHORE ACT, IT WAS ASSUMED THAT NOT ALL DEVELOPMENT WOULD PROVE INCONSISTENT WITH THE PROTECTION OF THE AREA. THIS LEGISLATION MERELY AFFIRMS THE SELF-EVIDENT OBSERVATION THAT THE PROTECTION OF THE RESOURCE SHOULD BE THE PARAMOUNT CONCERN OF THE CONGRESS. I BELIEVE THAT ALL THE PROVISIONS OF THIS BIPARTISAN LEGISLATION HAVE BEEN VERY WELL CONSIDERED AND STRIKE THE PROPER BALANCE BETWEEN THE RIGHTS OF LOCAL RESIDENTS AND THE NEED TO PROTECT THIS VALUABLE AREA FOR FUTURE GENERATIONS.

I WOULD ALSO LIKE TO TAKE THIS OPPORTUNITY TO COMMEND THE DISTINGUISHED SENIOR SENATOR FROM NEW YORK FOR HIS LONG INVOLVEMENT WITH THIS PROBLEM.

I DOUBT THE COMMITTEE WILL HAVE THE OPPORTUNITY TO CONSIDER A MORE JUDICIOUSLY CRAFTED PIECE OF LEGISLATION: THUS I URGE YOU, MR. CHAIRMAN, AND THE OTHER MEMBERS OF THIS COMMITTEE TO REPORT IT FAVORABLY IN THE NEAR FUTURE.

STATEMENT OF JOHN F. HAROLD
MAYOR OF THE TOWN OF OLATHE, COLORADO

HEARING ON S. 1547

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

October 6, 1983

Thank you for the opportunity to submit this statement in support of S. 1547 on behalf of the Town of Olathe, Colorado.

The Town of Olathe, located 280 miles west of Denver, was founded in 1882 as a construction depot for the Denver Rio Grande Railroad. The Town was incorporated in 1907. Due to an outbreak of typhoid and the lack of a dependable supply of drinking water, the Town approached the Federal Government in 1911 to buy mountain land at fair market value to construct a domestic water system that would insure quality and availability twelve months out of the year. The reservoir and 27 miles of pipe line were constructed in 1911-1912. In 1919 by private Act of Congress the Town of Olathe acquired title to this 640 acre parcel and received a Patent in 1921 after paying $1.25 per acre which was fair market value for unimproved grazing land. Over a period of 70 years the Town has invested approximately $540,000.00 in the reservoir, pipe lines, the diversion headgates and roads to bring water from the reservoir to supply the Town's potable water.

The Town of Olathe in the past five years has been faced with serious utility problems. The distribution water system in Olathe had to be replaced in 1970 at a cost of $520,000.00. In 1982 the Town's sewer system had to be upgraded and the lagoons aerated at a cost of $331,000.00. Olathe's population according to the 1980 census was 1,252 persons of which the Department of Housing and Urban Development has concluded that over 50% are low and moderate income. From these figures you can see that the cost per capita for recent utility improvements has been substantial. Furthermore, the ability of the Town to bond finance future improvements is prohibited by its legal debt limit. For these reasons the Town is unable to maintain this raw water supply without sufficient collateral.

In the past five years the Town has ceased to use this water supply as its direct source for treated drinking water. It was determined that the Town could more cost effectively join a three county water treatment and delivery system. The use of the Olathe reservoir water is being traded for raw water from the Uncompahgre Reclamation Project with the approval of the Bureau of Reclamation.

The Olathe Town Board of Trustees, although it has other pressing needs, has determined that developing a recreational area on the 640 acres is important. The Town will have funds available from the Colorado State Lottery which are restricted by State law for recreational use only. In addition to water storage, the reservoir property is ideally suited for recreational and grazing purposes which are compatible with surrounding land uses. The Board, however, is reluctant to invest those funds in property where there is no guarantee of clear title.

Without the protection of S. 1547, changing the language of the 1919 private Act, we are fearful of losing the property and the water rights. We believe that without its enactment, the Town's land and water rights will inevitably be lost simply because we cannot afford to maintain and update the pipe lines. The investment of over 70 years would be lost, and the reservoir which contributes to flood control would not be maintained. In view of the 1982 floods in the Uncompahgre Vally which originated in the vicinity of the Olathe reservoir, this is a further serious concern of the Town. Finally, a founding part of Olathe's history would be lost.

I feel that it is important to reassure the Committee, as I did in my testimony before the House Subcommittee on Public Lands and National Parks, that the Town has no desire or intentions to sell the reservoir lands at issue, and I attach for the record a copy of the Town Board of Trustee's resolution to that effect of April 14, 1983.

In May of this year, the House passed the companion bill to S. 1547 (H.R. 1191), which is in all essential aspects identical to the one before you today. We feel that the compromise reached by the House Subcommittee effectively balances the local and Federal interests, and we urge your favorable consideration.

Thank you.

RESOLUTION #5-1983

WHEREAS, the TOWN OF OLATHE, Colorado, by virtue of the provisions of Chapter 104 of the 65th Congress, Session III, acquired from the United States of America the SE¼ of Section 24, Township 48 North, Range 12 West, N.M.P.M., and the S½ of Section 19, and the SW¼ of Section 20, Township 48 North, Range 11 West, N.M.P.M., in Montrose County, Colorado, for the "purpose of protection of reservoirs and water supply pipelines and water work systems" of the Town, and

WHEREAS, the Town has used and maintained such property for such purposes for many years, and

WHEREAS, it is necessary that the Town continue to use the property for back-up water supply, and in addition the Town desires to utilize the lands for other appropriate purposes, without being subject to the possibility of reverter or the possibility of losing its water rights,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF OLATHE, COLORADO, as follows:

1. The Congress of the United States is requested and urged to pass an amendment to the provisions of Chapter 104 of the 65th Congress, Session III, deleting the limitation which currently restricts the use of the above described property to the Town water system purposes, and, further, deleting the reverter contained in such Act.

2. The Board of Trustees declares that it has no intention of selling said property but intends to use it as the Town back-up water supply system and to develop it for public purposes, specifically for recreational and park facilities, which can be appropriately included on the property in conjunction with the existing reservoirs.

3. In order to finance the necessary repairs and maintenance of the reservoirs pipeline, it is necessary to encumber the property as security for such financing, but it is the Town's intention to pay any such financing in due course and not to allow the property to pass out of the public ownership, since this property represents the Town's sole security for its domestic water supply.

ADOPTED by the Board of Trustees of the Town of Olathe, Colorado, this 14 day of April, 1983.

TOWN OF OLATHE

Mayor

ATTEST:

Catherine M Shipley
Town Clerk

The undersigned hereby certifies that the foregoing is a duplicate original of Resolution 5-1983 as adopted by the Olathe Board of Trustees on April 14, 1983.

Catherine M Shipley
Town Clerk

STATEMENT OF ANN B. VANCE
COUNSEL FOR THE TOWN OF OLATHE, COLORADO

HEARING ON S. 1547

SUBCOMMITTEE ON PUBLIC LANDS AND RESERVED WATER
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

October 6, 1983

Thank you for the opportunity to submit this statement in support of S. 1547 on behalf of the Town of Olathe, Colorado.

To give you a historical perspective of the problem facing the Town of Olathe, back in 1911, the Town began construction of its raw water supply storage and pipe line transmission system, consisting of two reservoirs and approximately 27 miles of pipe line. In 1914, the Secretary of the Department of the Interior granted the Town a right-of-way permit for the pipe line under the provisions of the Act of February 15, 1901 (31 Stat. 790). A copy of the permit is attached as Exhibit 1, for the benefit of the record. The patent itself was issued September 2, 1921, pursuant to the Act of March 3, 1919 (40 Stat. 1317), for a section of land on which the two storage reservoirs and a large portion of the pipe line and water system were and are located. A copy of the authorizing Act and patent are also provided for the record as Exhibits 2 and 3. The Act of March 3, 1919 authorized the issuance of a patent "for the purpose of the protection of the reservoirs and water supply pipe lines and waterworks system of said town", and conditioned the title with a clause providing "That title to the land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purposes herein provided."

In conjunction with the building of the reservoirs and pipe line, the Town of Olathe acquired various water rights through the water courts of the State of Colorado, with appropriations dating back to 1911 and consisting of direct flow, storage, and pipe line rights. The reservoirs and pipe lines were constructed by hand labor in extremely rugged terrain and at no little cost. They have been maintained and used as the source of supply of domestic water for the Town from 1911 to the present and constituted the sole source of domestic water until the mid-1970's. Since that time the Tri-County Water Conservancy District has intermittently furnished the Town with supplemental and emergency water and, through an exchange contract--approved by the Bureau of Reclamation--with the Uncompahgre Valley Water Users Association, the Town uses the Gunnison Tunnel Project Water for its main domestic supply and uses its reservoirs and pipe line for stand-by or emergency use.

At the present time, the Town's finances are very limited, and it faces serious costs necessary to update and maintain the reservoirs' 70 year old pipe line. Because of several other water related needs, the Town is presently bonded to the maximum allowed under Colorado law. It recently put in a new water distribution system costing about a half a million dollars and a new sanitary sewer system costing an additional third of a million. Moreover, an added but essential financial burden has arisen from the Town's joint venture with the Cities of Montrose and Delta and the Tri-County Water Conservancy District in the organization and construction of a common water treatment plant and water transmission system to furnish at wholesale treated domestic water to the member municipal Corporations. It is important also to understand that Olathe is a rural community of 1,250. In the past decade its population has doubled, compounding its municipal and financial problems.

Presently the Town faces immediate expenditures of roughly $75,000.00 to repair a portion of the reservoirs' pipe line and future replacement of the pipe line, which would cost up to $700,000.00 or more. The Town wishes to continue to use its reservoirs as back-up water supplies, but it is not financially capable of repairing or updating the reservoirs' pipe line should it fail. Without the reverter clause in the 1919 private Act, as intended by S. 1547, the Town could pledge both its property rights in the reservoirs and its water rights as collateral for a loan to do the necessary work. However, with the reverter right outstanding, the Town's title in the reservoirs, and even its title to its water rights, is legally insufficient to use as collateral for a loan.

Moreover, there is more at stake here than the potential loss of the reservoir lands. If the Town fails to keep the pipe line functional, it will lose both its water rights held for the last 70 years and its sole source of domestic water, that is the exchange contract with the Uncompahgre Valley Water Users Association. First, the water rights will fall because they are, under Colorado law, what are known as "storage decrees." Colorado, like other western states, is governed by the water law doctrine of prior appropriation, which requires that the water right must be put to beneficial use or it is lost. Olathe's storage decrees entitle it only to the "spring runoff", and without a place to store it, or if the water cannot be put to beneficial use because the pipe line is not functional, the rights become useless and will legally fall to junior appropriators or be abandoned. Second, without something to exchange, the Town's contract for the Gunnison Tunnel Project Water is an empty promise. The result is devastating, leaving the Town without a domestic water supply.

Another, although incidental, benefit of removing the reverter and the restriction on the use of the lands, is that the Town could use the reservoirs for recreational purposes, a use currently not authorized by the 1921 patent. With an unrestricted title, the Town could use monies apportioned to it from the State's new lottery program for recreational development and maintenance, an amount expected to be somewhere between $5,000 and $10,000 annually. We recognize that the Recreation and Public Purposes Act, as amended, 43 U.S.C.A. § 869-3, provides an administrative alternative to expanding the 1921 patent to authorize recreational use, but the reverter would remain outstanding, leaving the Town's domestic water supply still in jeopardy.

In conclusion, the law firm I represent, Brooks, Miller and Brooks of Montrose, Colorado, has spent the last two years studying Olathe's predicament, and we believe that this legislative proposal is the only viable solution to the Town's problem. The condition in S. 1547 that should the Town sell the lands in the next 10 years all the proceeds (over and above the cost of the Town's improvements) must be returned to the Federal Government, is patently fair and will provide no impediment to the Town's need to use the lands for collateral.

In conclusion, I impress upon you again the immediacy of the difficulties facing the Town of Olathe and urge that you give this legislation favorable consideration.

Thank you.

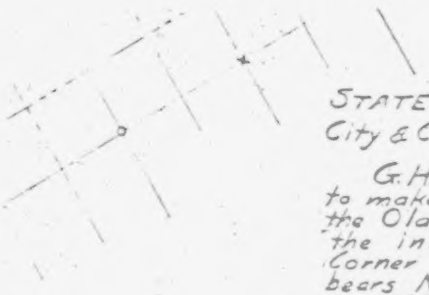
EXHIBIT 1 S. 1547

9/27/12
H.L.

Department of the Interior
October 5 1914

The use of the right of way shown on this map is hereby permitted in accordance with the provisions of the act of February 15. 1901 (31 Stat. 790) and the regulations present or future thereunder, subject to all valid existing rights and to the stipulations executed by the applicant as required by the Director of the Reclamation Service reserving common rights of way for canals and ditches constructed by authority of the United States, and First Form Withdrawal of July 27. 1908 under Act of June 17. 1902 (32 Stat. 388) is accordingly modified.

(Sgd) A. A. Jones
First Assistant Secretary



STATE OF COLORADO }
City & County of DENVER. } S.S.

G. H. Sethman, being duly sworn, says he is the Engineer employe to make the survey by the Town of Olathe, Colorado; that the survey of the Olathe Water System for the said Town of Olathe, described as follow. the initial point of the survey is located at a point whence the East ¼ Corner of Section No. 24, T48N, R12W of the New Mexico Principal Merid. bears N 60°00' E, 3095 feet, the terminal point being located at a point whenc the N.E. Corner of Section No. 16, T50N, R10W of the New Mexico Principal Merid. bears N 0° 10' W, 391 feet; the length of said Water System is 21 Mile capacity of pipe is 4 cubic feet per second of time, diameter of pipe binc was made under his direction as Consulting Engineer for the Town of Olathe, and under its authority was commenced on the 5th day of September, 1911, and ended on the 20th day of October, 1911, and that the survey of the said Water System accurately represents a proper grade line, which is the proposed line of the said Water System, and that such survey is accurately represented upon this map and by the accompanying field notes. And that no lake or lake-bed, stream or stream-bed is used for said Water System except as shown on this map.

G. H. Sethman
Engineer.

7. 1912 at 10 45 A.M.
ertify that the
cation for right
unappropriated
me

Register.

Sworn and Subscribed to before me this 9th day of July 1912.

Alice Hatch
Notary Publi

either party to have the right to appeal to the Supreme Court of the United States as in other cases. The said claim shall be presented within one year after the passage of this Act by petition in the Court of Claims by the Cherokee Nation as plaintiff against the United States as defendant, and the petition shall be verified by the attorney employed to prosecute said claim by the Cherokee Nation acting through its principal chief. A copy of the petition shall be served upon the Attorney General of the United States, and he, or some attorney from the Department of Justice to be designated by him, is hereby directed to appear and defend the interests of the United States in said cause. The law and practice and rules of procedure in said courts shall be the practice and law in this case.

Presentation of claims, etc.

The attorney for the Cherokee Nation shall be paid such fee as the Court of Claims may find reasonable, the same to be approved by the Secretary of the Interior: *Provided*, That in no case shall the fee decreed by said Court of Claims be in excess of the amount stipulated in his contract of employment, nor amount to more than ten per centum of the sum, if any, to which the Cherokee Nation shall be found entitled. The amount recovered, if any, for the Cherokee Nation shall be disbursed under the supervision of the Secretary of the Interior to the parties entitled thereto in the manner prescribed by the Court of Claims.

Attorney's fee.

Proviso.
Limit.

Disbursement of amount recovered.

Approved, March 3, 1919.

March 3, 1919.
[H. R. [illegible]]
[Public, No. 3[illegible]]

CHAP. 104.—An Act To grant certain lands to the town of Olathe, Colorado, for the protection of its water supply.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is hereby authorized and directed to convey to the town of Olathe, county of Montrose, and State of Colorado, the southeast quarter of section twenty-four, township forty-eight north, range twelve, and the south half of section nineteen, and the southwest quarter of section twenty, both in township forty-eight north, range eleven west, of the New Mexico principal meridian, in said county and State, containing six hundred and forty acres, more or less, to have and to hold said lands for the purpose of the protection of the reservoirs and water supply pipe lines and waterworks system of said town: *Provided*, That the said town of Olathe shall, within two years from the passage of this Act, pay for said lands, or such portions thereof as may be necessary for said purposes, at the rate of $1.25 per acre: *Provided further*, That the grant hereby made is, and the patent issued thereunder shall be, subject to all legal rights heretofore acquired by any person or persons in or to the above-described premises, or any part thereof, and now existing under and by virtue of the laws of the United States: *And provided further*, That there shall be reserved to the United States all oil, coal, and other mineral deposits that may be found in the lands so granted, and all necessary use of the lands for extracting the same: *And provided further*, That title to the land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purposes herein provided.

Public lands.
Grant to Olathe, Colo., for water supply.

Proviso.
Payment.

Subject to existing rights, etc.

Reservation for oil, etc.

Reversion for nonuser.

Approved, March 3, 1919.

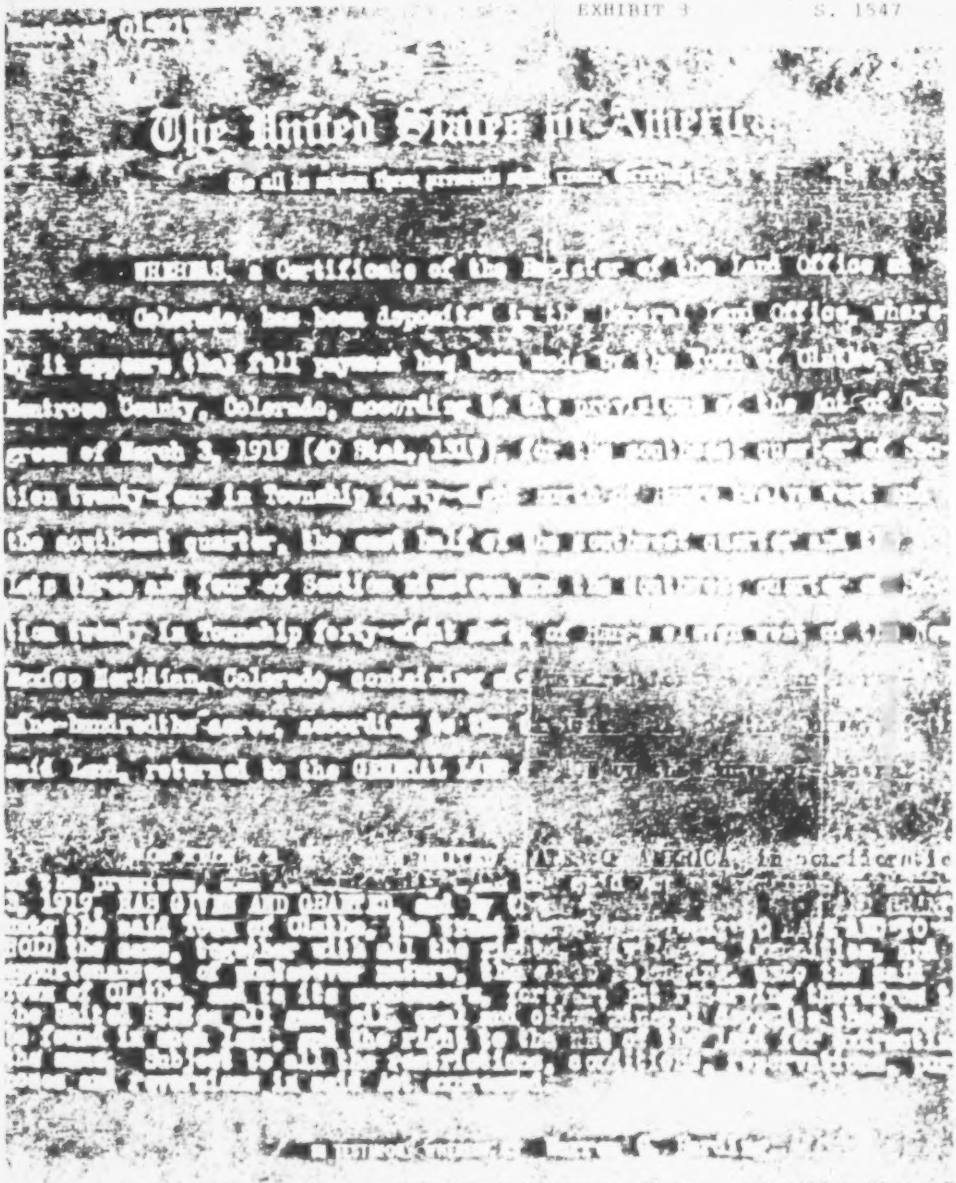
March 3, 1919.
[H. R. [illegible]]
[Public, No. [illegible]]

CHAP. 105.—An Act To authorize the construction of a lock and dam at Old River, [illegible] of Texas, and the [illegible] the purpose [illegible] water [illegible] of Trinity River [illegible] the mouth of Old River into Old River above said lock and dam, and for the protection of rice crops against salt water.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress

Old River, Tex.

EXHIBIT 3 S. 1547



Montrose 01321

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Montrose, Colorado, has been deposited in the General Land Office, whereby it appears that full payment has been made by the Town of Olathe, Montrose County, Colorado, according to the provisions of the Act of Congress of March 3, 1919 (40 Stat., 1317) [illegible] quarter of Section twenty-four in Township forty-eight north [illegible] the southeast quarter, the east half of the [illegible] Lots three and four of Section nineteen [illegible] Section twenty in Township forty-eight north [illegible] Mexico Meridian, Colorado, containing [illegible] nine-hundredths acres, according to the [illegible] said Land, returned to the GENERAL LAND [illegible]

[illegible] UNITED STATES OF AMERICA, in consideration of the premises [illegible] 3, 1919, HAS GIVEN AND GRANTED, and by [illegible] unto the said Town of Olathe, the tract [illegible] TO HAVE AND TO HOLD the same, together with all the rights, [illegible] and appurtenances, of whatsoever nature, thereunto belonging, unto the said Town of Olathe, and to its successors, forever; [illegible] the United States all gas, oil, coal and other [illegible] be found in such land, and the right to the use of [illegible] the same. Subject to all the restrictions, conditions, [illegible] purposes and provisions in said Act contained.

IN TESTIMONY WHEREOF [illegible]

[illegible] SECOND

[illegible] SEPTEMBER [illegible] one thousand [illegible] and TWENTY-ONE and of the [illegible]

United States the one hundred and FORTY-SIXTH.

By the President: Warren G. Harding

By Viola B. Pugh [illegible]

John O'Connell

Acting [illegible]

[illegible] 821122

'83 NOV -1 11 33

E. S. HOFMANN & SONS LIVESTOCK
Montrose and Cimarron, Colorado

October 28, 1983

The Honorable Malcom Wallop
Chairman, Subcommittee on Public
Lands and Reserved Water
Senate Committee on Energy and
Natural Resources
308 Dirksen Senate Office Building
Washington, D.C. 20510

Re: S. 1547

Dear Senator Wallop:

Our family has been in the ranching and livestock business in Montrose, Gunnison and Ouray Counties since the early 1900's. My father homesteaded in the Curecanti area in Gunnison County in 1916. In 1936 he purchased 5,240 acres in Montrose, Gunnison and Delta Counties along with BLM grazing permits, forest summer allotments and a small pasture ranch on the Gunnison River. The total price paid for this complete grazing unit was $66,000.00, averaging about $12.00 per acre.

Previous sales dating from time of patent to our acquisition of the land as taken from recorded land sales is listed below.

160.98 acres, elevation 8300', good to excellent grazing
land, located in S 30, T 48 N, R 6 W, N.M.P.M.
sale date December 17, 1913 $809.00
average price $5.00 per acre

320 acres, elevation 8400', good to excellent grazing
land, located in S 26, T 47 N, R 7 W, N.M.P.M.
sale date August 18, 1920 $2,240.00
average price $7.00 per acre

320 acres, elevation 8200' to 8400', excellent grazing
land, some irrigation water with canal through property,
located in S 17, 18, 19 and 20, T 48 N, R 6 W, N.M.P.M.
sale date November 19, 1920 $5,000.00
average price $16.00 per acre

160 acres, elevation 8300', excellent grazing land,
canal through property, located in S 19 and 30, T 48 N,
R 6 W, N.M.P.M.
salte date January 1, 1920, $1,920.00
average price $12.00 per acre

All of the above lands were far superior to the Town of Olathe land in question for grazing, ranching, recreation or any other use.

Land sales during the 1930's were in a depressed state and my father bought several thousand acres of pinion, cedar and sage brush lands at an elevation of 6200' to 6700'. These lands were homestead lands unable to sustain a livelihood and were sold for spring and fall grazing of sheep. Average price $1.50 to $2.00 per acre.

Sincerely yours,

E. S. HOFMANN & SONS LIVESTOCK

Edwin S Hofmann

Edwin S. Hofmann

JOHN K. VAN DE KAMP
Attorney General

State of California
DEPARTMENT OF JUSTICE

3580 WILSHIRE BOULEVARD, ROOM 800
LOS ANGELES 90010
(213) 736-2304

October 11, 1983

The Honorable Malcolm Wallop, Senator
SR 206 Russell Senate Building
Washington D.C. 20510

Dear Senator Wallop:

S. 1860: LAND TITLE QUESTIONS RELATED TO THE CALIFORNIA-NEVADA BOUNDARY

It has come to our attention that S. 1860, sponsored by Senator Paul Laxalt from Nevada and Senator Alan Cranston from California, is presently before the Subcommittee on Public Lands for consideration. This legislation is needed to resolve questions concerning the validity of certain land titles located in the vicinity of the interstate boundary. Its enactment will bring needed finality to land titles in this area.

In California v. Nevada (1980) 447 U.S. 125, the Supreme Court held that the Von Schmidt line of 1872 (from the Oregon border south to Lake Tahoe) and the United States Coast & Geodetic Survey line of 1899 (from the lake southeast to the Colorado River), constitute the boundary between the state by virtue of the doctrine of acquiescence. Prior to those surveys, other lines (the Houghton-Ives Survey of 1863 north of the lake and the Von Schmidt Survey along the oblique line south of the lake) had been briefly recognized by the states and the federal government as the interstate boundary. Thus a century-old controversy over the California-Nevada boundary was put to rest.

However it did not resolve the question of validity of certain federal grants made in reliance on earlier, discredited boundary lines. For the most part these grants were made before the currently recognized lines took effect but in some cases they occurred later.

When the boundary was finally resolved, the north-south line from Oregon to Lake Tahoe shifted to the east (see illustration No. 1) and the oblique line south of the lake shifted, to some extent, both east and west (see illustrations No. 3 & 4). Thousands of acres of land were granted to each state which, according to the boundary recently confirmed by the court, are actually located in the other state.

California's records indicate that the State of Nevada received over 9,400 acres of public lands which now are located in California. All of these lands have been conveyed away and now are in private ownership. The State of California has selected over 1,600 acres of such lands which are located in Nevada, and has transferred into private hands all but approximately 680 acres.

Decisions of the United States Supreme Court and of the Department of Interior have questioned the validity of titles based on grants from states of lands subsequently determined to be outside of their boundaries. California sought to have the Supreme Court resolve this question in California v. Nevada but despite the recommendations of the Special Master appointed in the case and the United States as Amicus Curie the Court declined to consider this question because it was deemed not to be within its exclusive jurisdiction. Attached for your reference are excerpts from papers filed in the boundary case.

Litigation to resolve this question would likely be protracted and costly. The more desirable alternative is federal legislation by which the original grants to the states of lands subsequently determined to be outside their boundaries are confirmed as having been properly made. S. 1860 could accomplish that purpose and I respectfully request its favorable consideration.

Very truly yours,

JOHN K. VAN DE KAMP
Attorney General

Attachment

cc: Honorable Alan Cranston
Honorable Paul Laxalt
Honorable Brian McKay

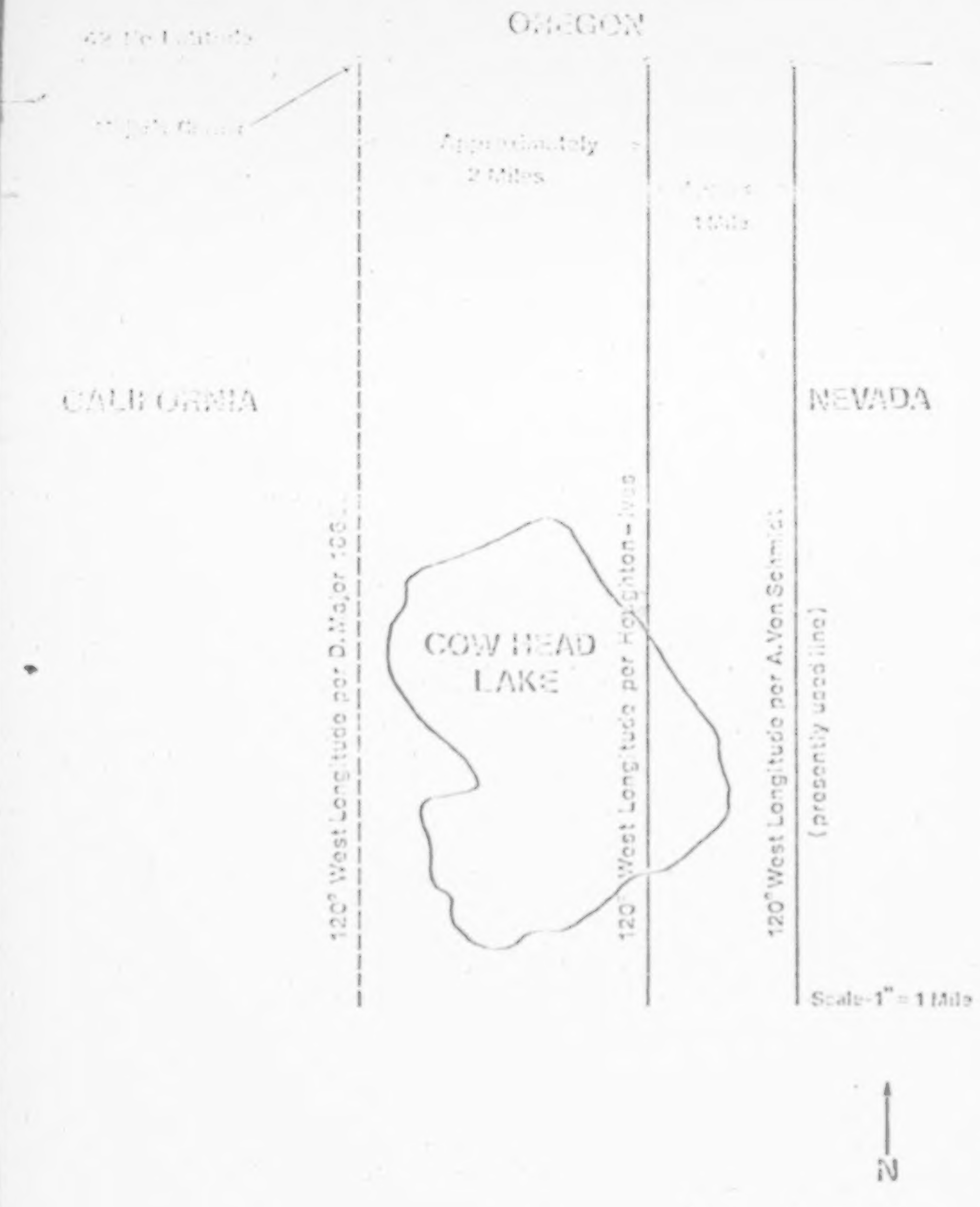

42° N Latitude
OREGON
Approximately
2 Miles
Approx.
1 Mile
CALIFORNIA
NEVADA
COW HEAD
LAKE
120° West Longitude per D. Major 1868
120° West Longitude per Houghton – Ives
120° West Longitude per A. Von Schmidt
(presently used line)
Scale-1" = 1 Mile
N

Illustration No. 1

Illustration No. 2

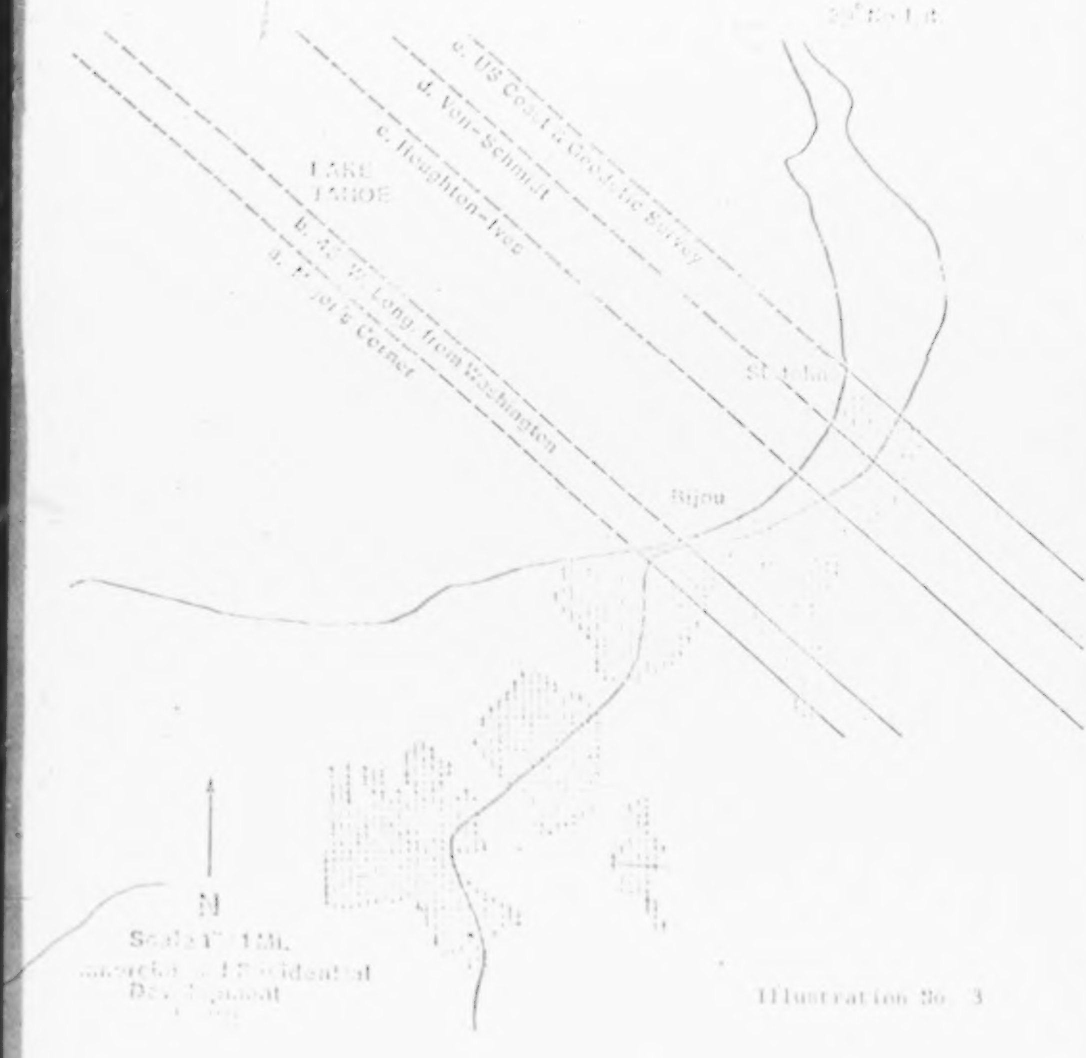

39° N. Lat.
e. US Coast & Geodetic Survey
d. Von-Schmidt
c. Houghton-Ives
LAKE TAHOE
b. 43° W. Long. from Washington
a. [illegible] Corner
St. John
Bijou
N
Scale 1" = 1 Mi.
[illegible] Residential
Development

Illustration No. 3

River, and whether you shall recognize the old channel of the river or the present channel as you now find it. * * *

In reply I have to say that, under the circumstances, in reference to the changes in the river [illegible] and the fact that [illegible] survey has never been returned to or recognized by the Department, your obvious duty will be to consider the intersection of the thirty-fifth degree of latitude with the middle of the channel of the river as you find it by your own personal examination and survey. * * *

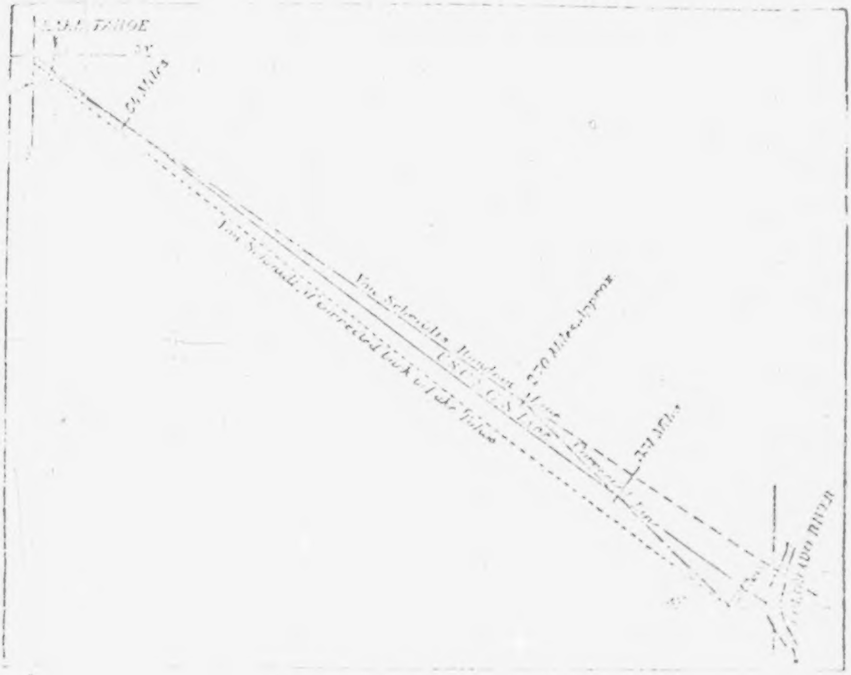
Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner.*

Copies of the two sketches are shown here. (See illustrations Nos. 4 and 5.)

In compliance with the requirements of the Commissioner a correction to the west

No. 5.



Von Schmidt's and C. & G. Survey Lines

along the thirty-fifth degree of latitude of 143 chains was to be made from the terminal point located by Lieut. J. C. Ives in 1861, and of 118 chains southwest of the terminal line run by Von Schmidt; namely, 20 chains to the southeast, being the error of closure on the initial point, and 98 chains to the southwest, being the amount of correction due to the shifting of the river between 1861 and 1873.

This correction of 118 chains—nearly 1½ miles—to the southwest at the Colorado River terminus of the Von Schmidt line, was not distributed proportionally along the whole line from the Colorado River to Lake Tahoe, but was limited to a distance of

Illustration No. 4

OREGON
NEVADA
CALIFORNIA
PACIFIC OCEAN
Colo. Riv.
ARIZONA
MEXICO

Illustration No. 5

CALIFORNIA *v.* NEVADA

ON EXCEPTIONS TO REPORT OF SPECIAL MASTER

No. 73, Orig. Argued April 14, 1980—Decided June 10, 1980

Held:

1. The Special Master was fully justified in invoking the doctrine of acquiescence in concluding that the true boundary between California and Nevada is that located by two surveys, funded by congressional appropriations in 1872 and 1892, since both States have acquiesced in those boundary lines from the time they were drawn. The issue of whether Congress had power to determine the lines even though an 1863 joint survey had been commissioned by the States, which both adopted the results thereof by statute, need not be decided, since it is not necessary that there be a particular relationship between the *origins* of a boundary and the legal *consequences* of acquiescence in that boundary. Long-standing acquiescence by the States can give the boundary lines the force of law whether or not federal authorities had the power to draw them. Pp. 130–132.

2. However, the Special Master's reference will not be expanded to authorize him to determine whether the United States should be made a party to the case and to make recommendations as to the quieting of title on various disputed borderlands. The ownership and title questions that remain typically will involve only one or the other State and the United States, or perhaps various citizens of those States, not disputes between the States. Thus, even if some of those questions do fall within this Court's original jurisdiction, they will not fall within its exclusive jurisdiction, and litigation in other forums is an appropriate means of resolving those questions. Pp. 132–133.

Exceptions to Special Master's report overruled, and report adopted in part.

BRENNAN, J., delivered the opinion for a unanimous Court.

James H. Thompson, Special Deputy Attorney General of Nevada, argued the cause for defendant. With him on the brief were *Richard H. Bryan*, Attorney General, *Larry D. Struve*, Chief Deputy Attorney General, and *Harry W. Swainston*, Deputy Attorney General.

Jan S. Stevens, Assistant Attorney General of California, argued the cause for plaintiff. With him on the briefs were *George Deukmejian*, Attorney General, and *N. Gregory Taylor*, Assistant Attorney General.*

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The report of the Special Master tenders for the Court's approval his determination of the true boundary between the States of California and Nevada. That boundary was the subject of numerous surveys in the latter half of the 19th century, and the central question presented in this original action is which, if any, of the lines which resulted properly marks the rugged border between the two States.[1] The Special Master combed the voluminous record and concluded that in combination the two most recent surveys had fixed a boundary to which both States have acquiesced for the better part of a century. Applying the doctrine of prescription and acquiescence, he concluded that the boundary so fixed was the proper one. Nevada takes exception to that determination on several grounds. We overrule those exceptions and, with the qualifications hereinafter noted, approve and adopt the Special Master's report.

**Solicitor General McCree* and *Deputy Solicitor General Claiborne* filed a memorandum for the United States as *amicus curiae*.

[1] California instituted this original action on April 22, 1977, when it filed its motion for leave to file complaint and complaint. On June 29, 1977, we granted that motion and appointed the Special Master. Basically, California sought a declaration that the currently recognized line dividing the two States was in fact the lawful boundary. As counsel for the State characterized it at oral argument, the suit was in the nature of a quiet title action and was precipitated by growing doubts about the geographic accuracy of the existing line as well as concerns regarding the validity of certain titles which depended upon the location of the border. The Special Master's report was filed in this Court on October 29, 1979, 444 U.S. 922, and we set Nevada's exceptions and related matters for oral argument. 444 U.S. 1065 (1980).

I

The two straight-line segments that make up the boundary between California and Nevada were initially defined in California's Constitution of 1849. The first, the "north-south" segment, commences on the Oregon border at the intersection of the 42d parallel and the 120th meridian and runs south along that meridian to the 39th parallel. And the second, the "oblique" segment, begins at that parallel and runs in a southeasterly direction to the point where the Colorado River crosses the 35th parallel. Cal. Const., Art. XII (1849). In 1850, when California was admitted to the Union, Congress approved the 1849 Constitution, and with it California's eastern boundary. Act of Sept. 9, 1850, 9 Stat. 452.

On the same day that it admitted California, Congress established a territorial government in the area immediately to the east. The organic Act for that new Territory—which was then called Utah—stated that it was to be "bounded on the west by the State of California." Act of Sept. 9, 1850, 9 Stat. 453. Eleven years later, the Territory of Nevada was created out of Utah. Congress indicated in the organic Act that Nevada might include portions of what was then California, but with the proviso that "so much of the Territory within the present limits of the State of California shall not be included within this Territory until the State of California shall assent to the same by an act irrevocable without the consent of the United States. . . ." Act of Mar. 2, 1861, 12 Stat. 210. No assent was ever given by California. Accordingly, when Nevada was admitted as a State in 1864 its western boundary and California's eastern one remained congruent.[2]

---

[2] Nevada's Constitution stated that its boundary would proceed "in a North Westerly direction along [the oblique section of the] Eastern boundary line of the State of California to the forty third degree of Longitude West from Washington [and then] North along said forty third degree of West Longitude, and said Eastern boundary line of the State of California

Notwithstanding brief and incomplete surveying efforts in the decade after California was admitted, the actual location on the ground of that State's eastern boundary remained highly uncertain—so much so that fighting broke out over the precise whereabouts of a small valley on the north-south line above Lake Tahoe, and a border town along the oblique line found itself claimed as the seat of both a Nevada and a California county.[3] These difficulties led California and Nevada to commission a joint survey of their border. Conducted in 1863, that survey located what is known as the Houghton-Ives line from the Oregon border south along the 120th meridian to a point in Lake Tahoe and then southeast for about 103 miles along the oblique line in the direction of the relevant point on the Colorado River. The remaining 300-plus miles of the oblique border were not surveyed.[4]

Both California and Nevada adopted the Houghton-Ives line by statute, but its significance was to be short-lived. In 1867–1868 Daniel G. Major surveyed the Oregon-California boundary for the General Land Office. One step in his work was to locate the intersection of that boundary and the 120th meridian. This he did, at a point more than two miles west

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to the forty second degree of North Latitude. . . ." Nev. Const., Art. XIV, § 1 (1864). Although it turns out that the 43d degree of longitude west from Washington does not exactly coincide with the 120th meridian west of Greenwich—which was the north-south reference in the California Constitution—the Special Master concluded that the Congress that approved Nevada's Constitution was of the view that the two lines were identical. Certainly the language of the Nevada Constitution supports this conclusion by seeming to equate the 43d degree of longitude west of Washington with the eastern boundary of California. In any event, we need not explore the matter farther since it would be relevant only were we to require a new survey of one or the other longitudinal line, and we do not find such a new survey necessary.

[3] Indeed, the town—Aurora—elected representatives to both the California and Nevada Legislatures in 1862, and those representatives apparently became speakers of their respective legislatures.

[4] Two years later one James S. Lawson extended the oblique portion of the Houghton-Ives line another 73 miles.

of that meridian as marked by Houghton-Ives. This discrepancy[5] eventually led the Commissioner of the General Land Office to recommend that Congress appropriate money for a full survey of the eastern boundary of California. His recommendation was followed in 1872.

The new survey was conducted by Allexey W. Von Schmidt. While originally instructed to commence his north-south line at the point located by Daniel G. Major, Von Schmidt concluded that the actual 120th meridian lay not only east of "Major's corner," but six-tenths of a mile east of the Houghton-Ives line as well. Accordingly, Von Schmidt marked a new north-south line starting at this location. His survey of the oblique boundary also had its surprises. From the intersection of his north-south segment and the 39th parallel he set off in what he thought was the direction of the intersection of the Colorado River and the 35th parallel. Unfortunately, the Colorado River had shifted since the point for which he was aiming had been marked, and rather than end at the wrong place he attempted to correct the line he was marking. It later turned out that his corrections were not complete and his line not entirely straight. But linear or not, his work did generate a boundary. And, although neither State adopted it by statute, the Von Schmidt survey won gradual acceptance in both California and Nevada.

In the 1880's, however, substantial doubts about the accuracy of the oblique segment of the Von Schmidt line were voiced in Washington. As a result, Congress appropriated funds in 1892 for a new survey of that segment. The survey was undertaken by personnel of the United States Coast and Geodetic Survey and conducted over a period of several years. It yielded a new oblique line and determined that the one charted by Von Schmidt had been neither straight nor accurate. Both States adopted the United States Coast and Geodetic Survey line by statute—California in 1901 and Nevada in 1903.[6]

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[5] A third survey, conducted in the summer of 1872 near the Oregon border, contributed to the confusion by concluding that the 120th meridian lay to the east of the locations pinpointed by both Major and Houghton-Ives.

The Special Master concluded that the Von Schmidt survey of the north-south line and the United States Coast and Geodetic Survey one of the oblique line were the most recent and accurate surveys available. While noting that Von Schmidt had not been entirely accurate, the Master found that the north-south line that resulted from his survey had been consistently and routinely recognized and accepted by agencies and departments of the State of Nevada for more than a century. That the Houghton-Ives line was the first north-south boundary marked and the only one approved by statute was, he found, beside the point because as a practical matter that boundary had been superseded a decade after it was established and neither State had objected.[7] As for the oblique boundary, the Master found that the United States Coast and Geodetic Survey line had not only been adopted by statute, but also been accepted and used by the two States for nearly 80 years. Since both States had treated these lines as the boundary from the time they were drawn, the Master invoked the doctrine of acquiescence to determine that together they in fact constitute the true and correct interstate boundary.

II

The State of Nevada's primary contention is that the Special Master's reliance upon the doctrine of acquiescence was is error. Basically, the argument is that once Nevada and California had conducted the 1863 joint survey which produced the Houghton-Ives line the Federal Government had no constitutional authority to mark a different line which had the effect of removing territory from one State and granting it to the other. Since the Congress was without power to determine the Von Schmidt and United States Coast and Geodetic Survey lines, the argument continues, they are without legal effect. And because States may not confer upon the Federal Government a power which the Constitution does not vest in it, acquiescence in those lines cannot make them lawful. Thus, Nevada concludes, either (1) Congress is constitutionally empowered to redraw the boundaries of the several States, in which case the Von Schmidt and Geodetic Survey lines may be upheld regardless of acquiescence, or (2) Congress is constitutionally powerless to alter these boundaries, in which case no mere century of acquiescence can convert a usurpation into law.

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[6] Nevada's statute was in effect when the present litigation was commenced, although it has subsequently been repealed.

[7] California notes that Nevada welcomed the Von Schmidt survey at the time it was conducted. Indeed, the Surveyor General of that State remarked that "within a year the State will be inclosed by an actual surveyed line and monuments, and the troubles heretofore existing to State and county officials, in dealing with an imaginary line, will be entirely and forever obviated." Report of the Surveyor General and State Land Register of the State of Nevada for the years 1871 and 1872, p. 8.

The flaw in this argument is that it assumes that there must be a particular relationship between the *origin* of a boundary and the legal *consequences* of acquiescence in that boundary. In fact, however, no such relationship need exist. Longstanding acquiescence by California and Nevada can give the Von Schmidt and Geodetic Survey lines the force of law whether or not federal authorities had the power to draw them. And the determination that the two States' conduct has had precisely this effect, therefore, does not place any sort of constitutional imprimatur upon the federal actions involved. See *Ohio* v. *Kentucky*, 410 U. S. 641, 648-651 (1973); *Indiana* v. *Kentucky*, 136 U. S. 479, 509-510 (1890). Accordingly, we need not address the issue of federal power to which Nevada adverts. It is enough that California claims and has always claimed all territory up to a specifically described boundary—the 120th meridian and the oblique line with which it connects—and that both States have long acquiesced in particular lines marking that boundary.[8] If Nevada felt that those lines were inaccurate and operated to deprive it of territory lawfully within its jurisdiction the time to object was when the surveys were conducted, not a century later. *Ohio* v. *Kentucky, supra*, at 649. In consequence, we hold that in these circumstances the Special Master was fully justified in invoking the doctrine of acquiescence.[9]

III

Having determined that the Special Master's resolution of the boundary dispute was proper, we turn to his recommendations regarding the quite separate issue of ownership of various disputed borderlands. This matter is here on California's motion to file a second amended complaint and bifurcate issues, which seeks further proceedings before the Special Master after the boundary questions are determined. Specifically, the United States has apparently confirmed or "clear-listed" to California and Nevada certain parcels that turn out to be on the "wrong" side of the boundary between those States. The Special Master was of the view that California's motion should be allowed and that he should be authorized (1) to determine whether the United States should be made a party to this case and (2) to make recommendations as to the quieting of title on various borderlands.

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[8] Nor is Nevada's position saved by the contention that California could not profit by the doctrine of acquiescence because its claim to the lands up to the Von Schmidt and United States Coast and Geodetic Survey lines was not made under color of title or claim of right. The fact is that California's claim has always been for all lands on its side of the boundary described rather specifically in its Constitution. So long as its claims were made under a survey that purported to reflect that boundary, it had colorable title and a claim of right.

[9] Several subsidiary issues relating to the California-Nevada border are considered in the Special Master's recommendations. First, it turns out that Von Schmidt's north-south line and the United States Coast and Geodetic Survey oblique line do not intersect at precisely the 39th parallel, as in theory they should. The Special Master suggests that the two States be given the opportunity to determine by agreement the point in Lake Tahoe where the two lines meet. Failing such an accord, he indicates that he would recommend a solution; but this probably will not be necessary since the parties are apparently in agreement that if the balance of the Master's report is accepted the best course is to extend the oblique line in a northwesterly direction to the point where it crosses the north-south line. This solution to the problem is entirely permissible. Cf. *New Hampshire* v. *Maine*, 426 U. S. 363 (1976). Second, the Master recommends that he be authorized to arrange for surveys, at the parties' expense, if necessary to resolve disputes over the precise location of portions of either of the lines we approve today. That, too, seems appropriate. And third, he states that we should reserve the taxing of costs until after a further report—a suggestion which we will follow since the possibility of partial surveys would make an assessment at this time premature.

We decline at this point to expand the Special Master's reference. The ownership and title questions that remain typically will involve only one or the other State and the United States, or perhaps various citizens of those States. Disputes between California and Nevada are not in the offing.[10] In consequence, even if some of the ownership questions to come do fall within our original jurisdiction, they will not fall within our exclusive jurisdiction. 28 U. S. C. § 1251 (1976 ed., Supp. II). Under these circumstances we see no reason to refer the matter to the Special Master. On the contrary, litigation in other forums seems an entirely appropriate means of resolving whatever questions remain.

In sum, we overrule Nevada's exceptions and approve and adopt the Special Master's report and recommendations except insofar as those recommendations would allow California's second amended complaint and permit proceedings relating to the ownership of disputed lands on the California-Nevada boundary.

So ordered.

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[10] At oral argument, counsel for the State of California conceded that he knew of no instance in which both States claimed the same parcel.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1978

No. 73, Original

STATE OF CALIFORNIA
Plaintiff,

v.

STATE OF NEVADA
Defendant.

PLAINTIFF'S BRIEF IN SUPPORT OF SPECIAL MASTER'S REPORT

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VII

ONCE THE BOUNDARY IS ESTABLISHED, THIS COURT SHOULD RETAIN JURISDICTION TO DETERMINE THE STATUS OF LANDS SELECTED BY NEVADA WITHIN THE TERRITORY OF CALIFORNIA

A. Thousands of acres of public lands were selected unlawfully by Nevada from within the territory of California

Although the boundaries were definitively set in 1873 (with respect to the north south line) and 1899 (as to the obliged, the General Land Office and its successor, Bureau of Land Management, inexplicably delayed closing their public land surveys on the new lines. E.g., exhs. 210-215, 217-231. As a result, Nevada continued blithely to select and sell thousands of acres of public lands known to be to be within California, with the apparent approval and consent of the federal government. E.g., Nevada Surveyor General's Report of 1911, exh. 232.

The record in this proceeding shows erroneous selections (primarily of internal improvement lands) by Nevada within the State of California, as follows:

1. *Prior to May 1, 1873*

Prior to May 1, 1873, the State of Nevada selected 2,133 acres from Lake Tahoe north that were within the State of California as its boundaries are delineated by the "Von Schmidt" line. Affidavit of Fred Sledd, exh. 238. Although most of this land was patented to private individuals, several parcels are still held by the State of Nevada. Exh. 239.

Although federal approval of these selections might have been justified by mistaken reliance on the "Houghton-Ives" line of 1863, the validity of these selections, and patents issued thereon, is in grave doubt. *Caffee* v. *Groover, supra,* 123 U.S. 1.

2. *After May 1, 1873*

Even more incomprehensible is the fact that the United States General Land Office and its successor, the Bureau of Land Management, continued to ratify and approve selections by the State of Nevada within California as delineated by the Von Schmidt line (a line established and accepted by the United States May 1, 1873) after it had accepted the Von Schmidt line as the California-Nevada boundary. E.g., exhs. 209, 232; Defendant's Answers to Plaintiff's Second Set of Interrogatories 49, 50, with exhibits. From Lake Tahoe north to the Oregon border, some 1,484.60 acres were released by the United States without authority of law to the State of Nevada even though this land was located in the State of California by federal survey contracted for and accepted by the United States. Exhs. 209, 236, 237, 238.

Although our researches with respect to the boundary from Lake Tahoe southeasterly to the Colorado River are not completed, it is anticipated that similar findings will be made with respect to Nevada selections there. We have already discovered that some 2,000 acres of land directly south of Lake Tahoe were unlawfully selected by the State of Nevada with the approval of the United States. Exh. 237.

This situation will be exacerbated, of course, if as Nevada urges, a new survey is to be ordered from the point established by Daniel Major on the California-Oregon border. See defendant's counterclaim, count II. Plaintiff's researches of the California-Nevada selections indicate that if a "Major's line" were to be surveyed, the title to some 34,040 acres of land from Lake Tahoe to the Oregon border selected by California from the public domain or granted to her as school lands and approved by the General Land Office would be in question. Along the border from Lake Tahoe southeasterly to the Colorado River, 13,894 acres would be similarly in jeopardy. Exhs. 209, 238.

Confusion runs rampant even today. The Department of Interior has taken the position, in a formal ruling, that school lands cleared to California but relocated within Nevada by a subsequent survey were, in effect, never school lands at all. E.g., *In re Pellkofer,* plaintiff's exh. 216. That the department is less then certain about its theory is evidenced by a communication from its Bureau of Land Management as late as November 1978, identifying a similar parcel and asking the California State Lands Commission its views with respect to its status. Exhs. 233, 234. Similar confusion exists with respect to a school land parcel confirmed to California by the Department of the Interior in 1910 and reconfirmed in 1950 even though the Bureau of Land Management granted a right of way over it to the Nevada Department of Highways in 1953. This parcel is recognized as California property by the assessor's office of Esmeralda County, Nevada, which is now threatening to sell it for nonpayment of taxes. Affidavit of F. D. Uzes, exh. H to Plaintiff's Motion to File Amended Complaint and to Bifurcate Issues.

B. Holdings of the United States Supreme Court and the Department of the Interior alike indicate that selections of public lands not made within the proper state are invalid and remain in the public domain

There is substantial authority to the effect that the selections and school land grants of Nevada within the

State of California and California within Nevada (as their boundaries were subsequently determined by the Von Schmidt survey north of Lake Tahoe and the U.S. Coast & Geodetic Survey south of that lake), may be invalid and therefore the land may still be within the public domain. The latest authority to this effect comes from the Department of the Interior itself in the form of *In re Pellkofer*, decision No. A-29332, August 29, 1968, exhibit 216 herein. In the *Pellkofer* case, applicant applied to the Bureau of Land Management for a right of way across what he alleged to be public domain situated in the State of Nevada. The bureau rejected the application on the ground that it lacked jurisdiction over that section because it had passed to California as school lands. The parcel in question was located in California by the Von Schmidt and Baker surveys of 1873 and 1884. However, when the oblique California-Nevada boundary was resurveyed by the U.S. Coast & Geodetic Survey, it was relocated on the Nevada side of the boundary. *Ibid.* On appeal, the Department of the Interior held that the lands in question had never passed to the State of California but remained in the public domain because of their subsequent location within Nevada. "Since the School Land Grant conveyed to California only the school sections within its boundaries, it follows, of course, that if this section 36 was not in California, as it was not, it did not pass to the state upon the acceptance on the plat survey." *Ibid.*

Of even greater concern are the earlier decisions of this Court with respect to the validity of grants made by states of lands subsequently determined to be outside their boundaries. In *Coffee* v. *Groover, supra,* 123 U.S. at p. 1, this Court held that a patent issued by the State of Georgia under what was then mutually (but mistakenly) assumed by Georgia and Florida to be the interstate boundary was invalid, and that a subsequent Florida patent under a swamp and overflow lands grant derived from the United States prevailed. This Court flatly stated such grants are invalid if they are made beyond the territory of the grantor. *Id.,* at pp. 21–23. See also *Poole v. Fleeger* (1837) 36 U.S. (11 Peters) 185, holding that grants by states which, when made, were actually beyond the territorial boundary were unlawful even if a compact subsequently established that line as the lawful boundary.

C. The United States should be invited to intervene; if she declines to do so, she should be joined in this proceeding

California has repeatedly pointed out the significance of this proceeding to the Departments of Justice and Interior. At issue are the authority of the federal government to make interstate boundary surveys, the validity of United States clear-listings and patents made in reliance thereon and the effect of a federal administrative ruling which sheds doubt on the title to thousands of acres of land. Informal efforts to obtain the participation of the Department of the Interior have been fruitless. Communications from the California State Lands Commission, the California Attorney General, and virtually the entire California congressional delegation have met with no response. Exhs. K–Q to Plaintiff's Motion to File Amended Complaint herein.

The interests of innocent purchasers as well as the states concerned requires that the status of titles be decided in this matter. Accordingly, California filed a motion requesting leave to file its second amended complaint to (1) add the United States as a necessary party; (2) obtain declaratory and quiet title relief with respect to (a) those parcels shown in record ownership of the State of California which are now apparently claimed by the United States to be the public lands in reliance upon subsequent surveys (e.g., *Pellkofer, supra*); (b) those parcels claimed by successors in interest of the State of California, represented by this State as parens patriae; and (c) those parcels within the State of California unlawfully granted to the State of Nevada; and (3) mandate the Secretary of the Interior to authorize selection by California of public domain lands within its borders to replace those that were unlawfully given Nevada. The Special Master has recommended that this motion be allowed. Special Master's Report 50.

The propriety of participation of the United States in a proceeding of this nature is well established. In *Texas* v. *Louisiana* (1972) 410 U.S. 702, it became apparent in the course of an interstate boundary dispute that the United States might have an interest in certain islands in the west half of the Sabine River. See Special Master's Report, *Texas* v. *Louisiana,* No. 36. Original, pp. 15–16 (Oct. Term, 1974). This Court thereupon invited the United States to participate in a second hearing for determination of such interest. *Texas* v. *Louisiana, supra.*

Additional precedent for such appearance exists in *Florida* v. *Georgia* (1854) 58 U.S. (17 How.) 478. There, the United States Attorney General actively petitioned for leave to intervene in an interstate boundary dispute on grounds strikingly similar to those existing here:

1. The validity of federal patents to individuals were at stake. "Here is responsibility of (the United States) to its grantees." *Id.,* at p. 481.

2. ". . . [T]o see that the case is fully and well tried, with all just defenses fully before the court . . . ." *Id.,* pp. 481-482.

3. "The United States have a general interest in the question of the boundaries of states, because of sundry political or legislative relations of the subject; as, for instance, apportionment of members of the house of representatives, collection districts, judicial districts, and many other things having reference to the boundaries of states." *Id.,* at p. 481.

4. As the states cannot change their boundaries by agreement without the consent of Congress, ". . . they ought not to be permitted to alter that boundary in the suit pending, either by possible mispleading, mistake in pleading, omission of pleading, or direct confession, or by omission of evidence . . . ." *Id.,* at p. 482.

Chief Justice Taney, writing for the majority, ruled that the United States should be permitted to intervene informally, inasmuch as it had a duty on behalf of the other states to examine into the subject, particularly where a judgment in such action would bind the United States. *Id.*, at pp. 493, 494.

The United States could properly intervene as a plaintiff in this action. *E.g.*, *United States* v. *Texas* (1950) 339 U.S. 707. Having refused to do so, it may be joined as a defendant. Fed. Rules Civ. Proc. 19(a). And this Court clearly may invite it to participate. See Special Master's Report 50. Such an invitation could be much more persuasive than were the fruitless pleas of California.

D. The court should proceed to determine the boundary issues and retain jurisdiction over the question of validity of California's and Nevada's selection of school lands and the possible federal interest therein

California is eager to avoid delay of the central issue of determination of the proper location of the California-Nevada boundary. It will not be necessary to delay such a decision because of the filing of a second amended complaint or because the United States is invited to express her views on the status of Nevada's lawless selections. Under similar circumstances, Justice Black pointed out that this Court could, after determining in general the ownership of an area, hold later hearings as necessary to determine the status of specific segments with more particularity. *United States* v. *California* (1947) 332 U.S. 19, 25–26. Indeed, ample precedent exists for such a procedure. In *Texas* v. *Louisiana*, *supra*, 410 U.S. at p. 714, this Court invited the United States to participate in a second hearing when it determined that there was a possible federal interest in certain lands. See Special Master's Report, *Texas* v.

Louisiana, No. 36, original, pp. 15-16 (Oct. Term, 1973). Determination of the initial boundary question will shape the character and nature of the issues raised in plaintiff's proposed second amended complaint. Abandonment of the case after such a determination would leave the rights of many innocent persons undetermined and lead to multiple litigation. Therefore, it is respectfully requested that this Court authorize the Special Master, as he suggests, to hold conferences and hearings as necessary to determine the interests of the United States, if any, and whether the United States should be made a party. Special Master's Report, Recommendation 5, p. 50. In the event such conferences and hearings indicate the necessity for filing a second amended complaint and joinder of the United States, an appropriate order can be entered.

CONCLUSION

In her amended answer and counterclaim and her briefs before the Special Master, Nevada eloquently describes the confusion and color of the early days of the far west. But none of the facts she sets forth justify moving the states' 106-year-old boundaries.

The alternatives suggested by Nevada are simple: The states authorized a survey in 1863, and it was completed —at least up to 103 or more miles south of Lake Tahoe. Readopt the Houghton-Ives line, urges Nevada. Recover the lost monuments and finish the survey abandoned south of Lake Tahoe over a hundred years ago.

In the

Supreme Court of the United States

October Term, 1978

No. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

vs.

STATE OF NEVADA

Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior U.S. District Judge
Special Master

In addition to the pleadings and other filings previously mentioned, all of which were submitted prior to the hearing of this case at Reno in January of 1979, there was filed by California on May 11, 1979, a Motion to File Second Amended Complaint and to Bifurcate Issues. This Motion was filed at the same time that California filed its Opening Brief.

California's Motion contains a general statement of the problems to be encountered regardless of which of the many lines proposed is ultimately determined to be the legal boundary between California and Nevada.

> "Research and discovery in the course of this proceeding has led to the conclusion that regardless of where California's eastern boundary is eventually placed, serious questions will remain as to the validity of thousands of acres of state school lands and internal improvement grants granted by the United States to California and Nevada. If, as some past decisions of this Court and the interpretation of the Department of the Interior suggest, that agency unlawfully confirmed or clear-listed large parcels of land to states not entitled to them, its actions—and patents subsequently issued to innocent purchasers—may be invalid. The United States may, therefore, have an interest in lands heretofore assumed to be in the ownership of California, Nevada, or their successors in interest."

California alleges:

1. That a determination of ownership interests between California, Nevada, and the United States is essential to a final and equitable conclusion of this litigation; and

2. That the Court should make an order bifurcating the issues of validity of California's and Nevada's selections of school lands pending a determination of relocation of the boundary.

In support of their first contention, California alleges that prior to May 1, 1873, Nevada selected 2,138 acres from Lake Tahoe north that were within the State of California under the currently existing Von Schmidt line. California further alleges that after the acceptance of the Von Schmidt line, the General Land Office continued to ratify and approve selections by the State of Nevada within California as delineated by the Von Schmidt line in the amount of approximately 1,484.60 acres. California alleges similar research findings with respect to Nevada's selection of lands in the area of the oblique line. California further alleges that holdings of this Court and the Department of Interior indicate that selections of public lands not made within the proper state are invalid and remain in the public domain, and that in order to fully resolve these issues, the United States should be made a party defendant.

California asks this Court in its Motion for an order (1) granting permission to file a second amended complaint and (2) bifurcating the issues of validity of federal approval and grants and retaining jurisdiction to determine such matters in subsequent proceedings.

Nevada filed a response to the Motion on May 15, 1979. In general, this response alleges:

1. That the United States is not an indispensable party;
2. That this Court should validate private titles as quickly as possible, and that to its knowledge there is no parcel of land which California and Nevada have each patented to different parties, and that the United States is not an indispensable party for this purpose; and
3. That the question of the status and title of public lands not patented to private parties

should be bifurcated. The concluding paragraph of this section of the response states:

> Nevada believes that California's primary concern is that the matter of the status and title of the public lands selections by either State may go unnoticed, or not be addressed by the Supreme Court when it decrees the final boundary. And the Court may decline to do so for the reasons noted, supra, p. 2. Nevada submits that California's concern could be alleviated by the Special Master including in his report of findings and recommecations [*sic*] to the Court, a recommendation that the Court retain jurisdiction to address the matter of title, invite the United States to intervene and refer the question of title back to the Special Master.

After receiving these filings, and a letter from California dated May 14, 1979, which detailed California's opposition to certain of Nevada's arguments and allegations in its response, your Special Master sent the parties a letter which in substance stated:

> While there are points of disagreement between you, I believe you are in agreement that I should proceed when the case is finally submitted to make a recommendation as to the boundary and following the Supreme Court's determination of that issue we can then take up any questions remaining unsettled.

Your Special Master will include hereafter certain recommendations with regard to the matters raised in the motion for bifurcation.

RECOMMENDATIONS

For the reasons given above your Special Master recommends:

1. That the boundary between the States of California and Nevada be determined and established to be the line known as the Von Schmidt line from its beginning at the intersection of the 42nd parallel of north latitude on the Oregon border and the 120th degree of longitude west from Greenwich, each as established by Allexey W. Von Schmidt in 1872 and extending south as marked and determined by Von Schmidt to the point in Lake Tahoe where such north and south line intersects the 39th parallel of north latitude, and continuing from such point on a straight line known as the United States Coast and Geodetic survey line as established by it from 1893-1899 running in a southeasterly direction to the point where the 35th parallel of north latitude intersects the Colorado River as determined by compacts between Arizona-Nevada and California-Arizona.

2. That the two states be given the right and opportunity to determine by agreement the point in Lake Tahoe where the north and south line ends and the oblique line begins and how it shall be marked, if at all, subject to approval of this Court, and in the absence of agreement that the Special Master, after hearings and testimony, make his recommendation as to the determination of said point and whether it shall begin exactly on the 120th meridian or exactly on the 39th parallel, or at a point approximately at such intersec-

tion, in order to do justice between the parties.

3. In event the parties are unable to agree upon the marking on the ground of either the Von Schmidt line or the U.S. Coast and Geodetic Survey line, that the Special Master be authorized to arrange for a survey as needed of any portions of either line, at the cost of the parties, each party on order of the Special Master contributing one-half of the estimated cost thereof, and report his recommendations to this Court.

4. That California's Motion to File a Second Amended Complaint and Bifurcate Issues with respect to ownership of disputed lands on the California-Nevada boundary be allowed.

5. That the Special Master be authorized to determine after conference with the parties and with a representative of the Office of the Solicitor General of the United States, whether the United States should be made a party to this case, and to hold hearings if such are deemed necessary as to the interest, if any, of the United States in any lands patented or granted to either the State of California or State of Nevada along the boundaries herein determined, and to make such recommendations as are just and equitable under the prayer of each state for such other and further relief as the Court may deem proper, including recommendation as to the quieting of title to any lands, if needed.

6. In any further hearings relating to land ownership, or title thereto or to the quieting of title in case of dispute between the two states or between either state, or both states, and the United States, as to location and ownership of land, that the California Land Title Association be permitted, to the extent the Special Master deems necessary, to file briefs *amicus curiae*.

7. That the Court reserve the final taxing of costs herein until its further order and after a further report as to such survey and the cost thereof from the Special Master.

Respectfully submitted,

ROBERT VAN PELT
Special Master

IX. APPENDICES

A. Summary of California Exhibits, and Other Evidence

1. Map, California Boundaries as Set Forth in the Constitution of 1849 (8 1/2" × 11").
2. Map, Lines at Issue in Vicinity of 42° North Latitude
(8 1/2" × 11").
2A. Francois D. "Bud" Uzes qualifications as expert witness on surveying and boundary issues.
3. Map, Oblique Lines in Issue at Lake Tahoe (8 1/2" × 11").
4. Map, Alternative Constructions of Interstate Border in Lake Tahoe (30" × 44 1/2" approx., plus three color reductions 6 3/4" × 10").
5. CAL. CONST. of 1849, art. XII (1853 Cal. Comp. Laws at 58). Description of state boundary.
6. Act of Sept. 9, 1850, ch. 50, 9 Stat. 452. An Act for the Admission of the State of California into the Union.
7. CAL. CONST. of 1879, art. XXI § 1 (1880 Cal. Stats. at xlii). Description of state boundary.
8. CAL. CONST. of 1879, art. XXI, § 1 (as amended 1956). Description of state boundary.
9. CAL. CONST. of 1879, art. III, § 1 (as amended 1972). State boundary description.
10. Stipulation between California & Nevada, Dec. 15, 1978. Copies of 1956 and 1972 amendments to California constitution attached to Stipulation are true and accurate copies of the amendments.
11. Cal. Const. Revision Commission memorandum and study on revising Cal. Const. art. XXI relating to state boundaries, June 1966.
12. CAL. STATE LANDS COMMISSION, DISCUSSION OF THE CALIFORNIA-NEVADA STATE BOUNDARY (F. D. Uzes, Mar. 25, 1977). Discusses the determination of latitude and longitude, early surveys of both the meridian and oblique lines.

No. 73, Original

In the Supreme Court of the United States

OCTOBER TERM, 1979

STATE OF CALIFORNIA, PLAINTIFF

v.

STATE OF NEVADA

ON THE REPORT OF THE SPECIAL MASTER

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.
Solicitor General

LOUIS F. CLAIBORNE
Deputy Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 73, Original

STATE OF CALIFORNIA, PLAINTIFF

v.

STATE OF NEVADA

ON THE REPORT OF THE SPECIAL MASTER

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of February 19, 1980, inviting the Solicitor General to express the views of the United States.

1. Although contemplating future proceedings and making recommendations with respect to them (which we discuss below), the present Report of the Special Master primarily tenders for the Court's approval a determination of the true boundary between the States of California and Nevada. The definition of the two segments of that boundary—one running north-south along the 120th meridian, the other running obliquely from the intersection of the north-south line and the 39th parallel to the intersection of the 35th parallel and the Colorado River—is not in dispute. But, because several inconsistent surveys have purported to map those lines, or portions of them,

the question arises which survey should be accepted as effectively locating the boundary, or whether a new survey should be run.

We endorse the Special Master's solution of the problem. He concluded that the last complete survey of the north-south boundary, the so-called Von Schmidt line of 1872, should be adopted for that segment, and the subsequent Coast and Geodetic Survey line of 1893-1899 should be adopted for the oblique segment of the boundary. Report 49, para. 1. Both of these lines were run by United States surveyors, pursuant to special Congressional direction. Report 22, 27-28. But it is not for that reason that the Master preferred them. Nor do we support his conclusion on that ground. The Master reached his recommendation because these two surveys were the latest, the most complete and the most accurate (Report 29-34), and, primarily, because both States have acquiesced in treating these lines as the interstate boundary for more than a century in one case and some 80 years in the other. Report 35-37, 45.

In our view, the last consideration is dispositive. In the case of the oblique boundary, both States formally adopted the Coast and Geodetic Survey line by statute in 1901 and 1903. Report 45. While the Von Schmidt north-south line was not similarly confirmed by State legislative action (Report 35), it is undisputed that, ever since 1873, that line has been used by both States in the exercise of jurisdiction. Report 45. In these circumstances, we believe the Master was fully justified in invoking the doctrine of prescription and acquiescence as laying the matter to rest. Report 41-48. See *Ohio* v. *Kentucky*, 410 U.S. 641, 649-651 (1973), and cases there cited.

2. After recommending the lines which, in his view, represent the true boundary between the two States, the Special Master turns to minor technical matters. Because the recommended north-south line and the oblique line do not intersect exactly at the 39th parallel (as, in principle, they should), the question arises how they should be connected. The Master urges that the State parties should be free to resolve that matter by agreement, failing which he would recommend a solution. Report 49-50, para. 2. In fact, as we read their respective briefs, California and Nevada have already agreed that the appropriate course, assuming the Court approves the Master's major boundary determinations, is to extend the oblique boundary in a straight line to the point where it meets the north-south boundary (Nev. Br. 45-51; Cal. Br. 49-51),[1] thereby avoiding what California aptly characterizes as "unsightly dog-legs" in the middle of Lake Tahoe (Cal. Br. 50). The simplicity of this resolution commends it, in our view, and we urge the Court to accept that determination.

The Special Master also seeks authority to arrange for any necessary further resurveying of the lines he has recommended if the parties disagree as to their location on the ground. Report 50, para. 3. The cost would be borne equally by the two States. *Ibid.* Although we are not aware of any dispute as to the location of these lines, again, the Master's recommendation seems entirely reasonable. The United States would, of course, fully cooperate in any necessary work by supplying all relevant information at the disposal of the Government.

---

[1] We here refer to the documents entitled "Nevada's Exceptions to Report of Special Master and Brief" and "Plaintiff's Brief in Support of Special Master's Report," both filed in December 1979.

3. We come now to the Special Master's final recommendations (Report 50-51, paras. 4-6), suggesting further proceedings to settle the title consequences of a ruling by the Court endorsing his boundary determinations. That matter arises because, in May 1979, California submitted to the Special Master a Motion to File Amended Complaint and Bifurcate Issues which alleged that the United States has confirmed or clear-listed lands in California to Nevada, and vice-versa, in derogation of the controlling grant statutes; that most such lands were in turn patented to individuals by the State which had obtained federal approval; and that the validity of these State selections and the patents issued under them is in doubt. See Report 11-13.

a. The existing parties appear to agree that "title" proceedings to resolve these questions, if appropriate at all, ought to follow, rather than precede, this Court's final decision fixing the interstate boundary. See Report 14. For our part, we endorse that course. Any effort to quiet titles along the boundary must obviously await a binding determination as to its location, still disputed between the States. There remains to consider, however, whether such proceedings, in this Court, are necessary, and, if so, what role the United States should play.

b. If all the territory disputed between the two States were still held by the United States—whether as part of the public domain or in reserved status—or if the lands had been patented directly by the United States to individuals, fixing the interstate boundary would affect only political jurisdiction and no further title proceedings would be necessary. But substantial acreage has passed into State hands and most of it, in turn, to private owners, and it appears that some of these selections were made, and subsequent patents issued, by each State in what is the territory of its neighbor or at least by Nevada in California. California has questioned the validity of such extraterritorial selections and patents and seeks leave to file an amended complaint putting the matter at issue. Nevada apparently asserts that at least private titles, although derived from a sovereign acting beyond its jurisdiction, are not open to challenge, but seems to agree that the matter should be settled. In these circumstances, a genuine controversy exists and, when the boundary is finally fixed, further proceedings to resolve the title questions seem unavoidable.

It might be supposed that the title consequences could be resolved by administrative proceedings within the Department of the Interior. But it is far from clear that that Department retains jurisdiction to correct any errors in approving or "clear-listing" selections made by one State in the territory of the other, especially where patents to individuals have issued. Moreover, neither State suggests that it would accept such administrative determinations if undertaken. Nor does it seem possible to finally resolve the matter in a quiet title action initiated in a district court by one State against the United States under 28 U.S.C. 2409a. Insofar as the States themselves are at odds over the question, this Court is the only federal forum with jurisdiction. 28 U.S.C. 1252(a)(1); *California* v. *Arizona*, 440 U.S. 59, 61, 63 (1979). Accordingly, the Special Master was correct, we believe, in recommending that California be granted leave to file its amended complaint (Report 50, para. 4) albeit without presently joining any federal defendants.

c. We reach, finally, the question of the role of the United States in any such further proceedings. Although he has recommended allowance of California's amended complaint, which names the United States and the

Secretary of the Interior as added defendants, the Special Master clearly intends to reserve the matter of joining the federal Government until after he has consulted further with the present parties and the Office of the Solicitor General. Report 50, para. 5. We welcome that course.

To be sure, there is no longer any doubt that the United States can be joined as a defendant if it asserts title to any of the lands in dispute. *California* v. *Arizona, supra*. Nor do we suppose this Court lacks jurisdiction to entertain an action in which both States, in controversy with each other, seek to compel the Department of the Interior to rescind or confirm earlier administiative decisions approving erroneous State selections, if that Department still has competence in the matter. See 5 U.S.C. 706. But it may well be that the United States will disclaim all interest in the disputed lands and the Master may conclude that the Department of the Interior has long since lost jurisdiction to take any curative action. In that event, it would not seem necessary or appropriate to join the United States or its officers in the contemplated title proceedings.

Because the United States has not yet reached a final conclusion as to its interest or competence in respect of the lands at issue, the Master's recommendation seems entirely appropriate. Should the United States fail, promptly after this Court's boundary determination, formally to disclaim all interest in the contested acreage, or fail to satisfy him that the Government is powerless to take remedial action, the Special Master, we suggest, should be authorized to join the United States as a party defendant in the future proceedings. There is no occasion to prejudge the outcome of the contemplated consultations at this stage. At all events, the United States would, of course, afford the Master all reasonable assistance in carrying out his task.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

LOUIS F. CLAIBORNE
Deputy Solicitor General

MARCH 1980

CALIFORNIA LAND TITLE ASSOCIATION
P.O. BOX 13968 • SACRAMENTO, CALIFORNIA 95813 • (916) 444-2647

October 12, 1983

The Honorable Malcolm Wallop
Chairman, Subcommittee on Public
  Lands and Reserve Water
Room SD 308
Dirksen Senate Office Building
Washington, D. C.   20510

Re: S. 1860

Dear Senator Wallop:

On behalf of the California Land Title Association, I am writing to urge your support of and your subcommittee's favorable action on S. 1860 (Laxalt and others). This bill is needed to rectify errors in the transfer of public lands by the United States to either the State of California or Nevada, which lands were physically located within the jurisdiction of the other state.

The necessity for this legislation is occasioned by a decision of the United States Supreme Court in the case of California v. Nevada 447 U. S. 125 (1980). At issue before the court was the true location, on the ground, of the boundary separating California and Nevada. Invoking the doctrine of acquiescence, the United States Supreme Court ruled that the boundary was that which each of the states had recognized as the true boundary for the preceding one hundred (100) years. This issue having been resolved, the court turned down the Special Master's recommendation that the United States be joined in the action for purposes of resolving title issues respecting various lands granted by the United States to either California or Nevada which, upon establishment of the true boundary between these states, are physically located in the other state. In essence, the court recommended that this collateral issue be resolved in other forums.

Resort to piecemeal litigation involving each parcel erroneously conveyed to either California or Nevada would be time consuming, needlessly expensive, and a considerable burden on the judicial system. There exists no parcel of land in which both California and Nevada claim an interest which is adverse to the other. Rather the vast majority of the lands in issue are held in private ownership following transfer from the respective states some one hundred plus years ago. The necessity for S. 1860 is therefore one of curing technical defects in the chain of title to these privately owned lands.

The proposal before your subcommittee has been reviewed and is supported by not only our Association but, the Attorneys General of California and Nevada, the Nevada Land Title Association, and the California State Lands Commission.

It is the consensus of these groups that S. 1860 offers a reasonable solution to an otherwise difficult problem and affords a result which will correct a technical defect in title occasioned by an honest mistake of a governmental official in determining the true boundary separating California from Nevada. This consensus also avoids undue hardship for hundreds of private landowners who have taken title to these lands unaware of this potential cloud on their titles.

For the above stated reasons, I respectfully request your support of S. 1860. Should you have further questions or desire expansion of any of the points raised herein, I would be pleased to assist you.

Respectfully yours,

Sean E. McCarthy

Sean E. McCarthy
Executive Vice President
and Counsel

SEM:ks

cc: Senator Paul Laxalt

Enclosures: Report of Special Master
California v. Nevada

In the

Supreme Court of the United States

October Term, 1981

No. 73, Original

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATE OF NEVADA,
Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior United States
District Judge
Lincoln, Nebraska
Special Master

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In the

Supreme Court of the United States

October Term, 1981

No. 73, Original

STATE OF CALIFORNIA,

Plaintiff,

vs.

STATE OF NEVADA,

Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior United States
District Judge
Lincoln, Nebraska
Special Master

This case involving the boundary between the States of California and Nevada was previously before this Court on the report of your Special Master filed October 29, 1979. On the 10th day of June, 1980, the Court, by unanimous decision, affirmed the report of the Special Master. *California v. Nevada*, 447 U.S. 125 (1980). In a footnote, the Court discussed the procedure for the marking of the boundary and stated in part:

> "Several subsidiary issues relating to the California-Nevada border are considered in the Special Master's recommendations. First, it turns out that Von Schmidt's north-south line and the United States Coast and Geodetic Survey oblique line do not intersect at precisely the 39th parallel, as in theory they should. The Special Master suggests that the two States be given the opportunity to determine by agreement the point in Lake Tahoe where the two lines meet. Failing such an accord, he indicates that he would recommend a solution; but this probably will not be necessary since the parties are apparently in agreement that if the balance of the Master's report is accepted the best course is to extend the oblique line in a northwesterly direction to the point where it crosses the north-south line. This solution to the problem is entirely permissible. Cf. *New Hampshire v. Maine*, 426 U.S. 363 (1976). Second, the Master recommends that he be authorized to arrange for surveys, at the parties' expense, if necessary to resolve disputes over the precise location of portions of either of the lines we approve today. That, too, seems appropriate."

Id. at 132 n.9.

Counsel, with the assistance of surveying and engineering experts for the States and the National Geodetic Survey, have reached an agreement, dated February 5, 1982, called Stipulation. The Stipulation sets out the location and marking of the entire boundary between the two states. A copy of this Stipulation, marked Appendix 1, is attached hereto as a part of this report. A proposed Decree was also tendered to your Special

Master, a copy of which is marked Appendix 2 and attached hereto. The original signed Stipulation and the proposed Decree are being submitted separately to the Clerk for filing. The original documents contain a map designated Exhibit A showing the agreed upon intersection in Lake Tahoe of the Von Schmidt north-south line and the United States Coast and Geodetic Survey oblique line. In order to include Exhibit A in this report, it has been reduced in size exactly 50% from the original. Thus, the scale as shown upon the reduced copy in the appendix is inaccurate. The 50% reduction would also allow the map to be printed as a part of the Decree in the Official Reports of the Supreme Court.

Your Special Master has discussed this reduction in size with counsel, who have conferred with their respective experts, and have agreed, and so advised me, that the reduction of Exhibit A has no effect on the information it contains except for the scale. The parties are agreed, and your Special Master concurs, that the simplest way to eliminate this problem is to remove the scale from the map, as was done with Appendix 3, attached hereto. Appendix 3 could then be substituted for Exhibit A in this Court's printed version of the Decree, providing it is acceptable to the Court. The parties do believe that the map is necessary for the benefit of future surveyors and for the information of the public in each State. Even in its reduced size, the map is legible and will serve the purpose of the parties.

In order to make the Stipulation and this Court's Decree available to interested persons, the Attorneys General of the two States, by David B. Judson and Larry D. Struve, have agreed that a certified copy of each shall be filed in appropriate offices in the States of California and Nevada. In Nevada these documents will be filed with the State Lands Registrar, Room 120, 201 South Fall Street, Carson City 89701. California will file them in the State Archives, 1020 O Street, Sacramento 95814. The California State Lands Commission will also maintain copies at its office at 1807 13th Street, Sacramento 95814. They have also agreed that copies of these documents should be offered to the National Archives or the Library of Congress, whichever institution, if either, will accept them.

Considerable work has been done by the National Geodetic Survey, a sub-division of The National Oceanic and Atmospheric Administration, on the surveys agreed upon by the parties. Counsel and your Special Master recognize the work that has been done, without charge to the parties, and believe that the solution to this long-standing controversy between the two sovereign States would have been delayed for a much longer time without such help and assistance.

Counsel proposed and your Special Master agrees that this report should contain the following recognition:

> "As part of their agreement to determine the point in Lake Tahoe where the north-south and oblique lines intersect, the states requested the National Geodetic Survey of the National Oceanic and Atmospheric Administration to locate and monument certain points around the periphery of the lake from which this point of intersection as well as the positions of the boundary lines within the lake could be calculated. The National Geodetic Survey consented and undertook the task at its own expense. Both states have expressed their satisfaction for the meticulous and technically precise job done by the Survey and their appreciation for the very professional, courteous and expeditious manner in which that staff performed the job. The Assistance offered by the National Geodetic Survey was instrumental in the final resolution of this controversy."

Your Special Master recommends that the Court accept the parties Stipulation and enter the Decree submitted herein, but that the 50% reduced map, Appendix 3, be substituted in the Decree of this Court for Exhibit A, attached to the original Stipulation. Your Special Master further recommends that no costs be taxed for the services of your Special Master herein, that upon the order of termination of this case your Special Master file a report setting forth the amount of money received by him from the parties for the payment of costs and expenses pursuant to his requests and of its disbursement for approval by the Court unless prior thereto the parties in writing have approved your Special Master's report as to the disbursement of said moneys.

Respectfully submitted,

ROBERT VAN PELT,
Special Master
Senior U.S. District Judge
566 Federal Building
100 Centennial Mall North
Lincoln, Nebraska 68508

DATED: April 27, 1982.

Appendix 1

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981
No. 73, Original

STATE OF CALIFORNIA,)
)
Plaintiff,)
)
v.)
)
STATE OF NEVADA,)
)
Defendant.)
)

STIPULATION

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State of Nevada

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1981
No. 73, Original

STATE OF CALIFORNIA,)
)
Plaintiff,)
)
v.)
)
STATE OF NEVADA,)
)
Defendant.)
)

STIPULATION

It is hereby stipulated by and between the State of California, Plaintiff, and the State of Nevada, Defendant, by and through their respective counsel whose signatures are affixed below, that:

1. On June 10, 1980, the United States Supreme Court approved the Special Master's recommendation that the boundary between the States of California and Nevada be determined and established to be the line known as the Von Schmidt line from its initial monument at the intersection of the 42nd parallel of north latitude on the Oregon border and the 120th degree of longitude west from Greenwich, each as reported by Allexey W. Von Schmidt in 1872 and extending south as marked and determined by Von Schmidt to the point in Lake Tahoe on or near the 39th parallel of north latitude where such north and south line intersects a straight line known as the United States Coast and Geodetic Survey line as established by it from 1893-1899 and continuing from such point of intersection along

said straight line running in a southeasterly direction to the point where the 35th parallel of north latitude intersects the Colorado River as determined by compacts between Arizona-Nevada and California-Arizona. The Court decision is more fully set forth in 447 U.S. 125.

2. The Court recognized that the Von Schmidt north and south line and the United States Coast and Geodetic Survey oblique line do not intersect at precisely the 39th parallel of north latitude.

3. The Court approved the Special Master's recommendation that the two states be given the opportunity to determine by agreement the point in Lake Tahoe where the north and south line ends and the oblique line begins and how it shall be marked, if at all, subject to the approval of the Court.

4. The states have agreed on a method by which to locate the point of intersection of these lines in Lake Tahoe and have requested the National Geodetic Survey of the National Oceanic and Atmospheric Administration within the Department of Commerce to perform the field work necessary to locate and monument reference points for this purpose around Lake Tahoe.

5. Pursuant to this request the National Geodetic Survey has completed an official project entitled California-Nevada Boundary Resurvey, Lake Tahoe (Task No. 83621115; G16758) in which the desired reference monuments have been established according to the authorized standards and regulations of that agency.

6. The National Geodetic Survey has provided the states with the official results of the project which contain the adjusted coordinates for the reference monuments. The states have agreed that the method used to established the point of intersection in Lake Tahoe of the aforesaid lines by means of these reference monu-

ments is the best method available to establish the true boundary between the states falling within Lake Tahoe.

7. The states have further agreed that a copy of the project report, computations and any other pertinent records made available to either state by the National Geodetic Survey relative to the monumentation of the reference points hereinafter described shall be filed as public records in an appropriate state agency in each state whose interest may be affected by the lake boundary and angle point described herein.

8. The states have further agreed to strengthen the rock pile containing the marker placed in 1872 by Allexey W. Von Schmidt at the place as determined by him to be the beginning of the aforementioned north-south line at or near the intersection of the 42nd parallel of north latitude along the southern boundary of the State of Oregon and the 120th degree of longitude west from Greenwich which is referred to as the Initial Point on the California-Nevada boundary in the proposed description hereinafter set forth, said strengthening to occur at a time and in a manner to be mutually agreed upon between the two states, so that said marker becomes a more secure permanent monument on the California-Nevada boundary.

NOW, THEREFORE, THE PARTIES AGREE that the boundary between the States of California and Nevada should be described in the decree of this Court as follows:

Beginning at the Initial Point on the California-Nevada boundary as established under authority of the Act of June 10, 1872, 17 Stat. 358, by Allexey W. Von Schmidt in 1872 as an eight (8) inch square wood post set in a large mound of stone at the intersection of the 42nd parallel of north latitude along the southern boundary of the State of Oregon and the 120th degree of longitude west from Greenwich, each as reported by him; thence running southerly along said 1872 boundary as surveyed and marked by Allexey W. Von Schmidt to a cast iron monument designated as Von Schmidt Milepost 191 on said boundary; thence S 00° 09′ 15.″21 W along a line directed toward a standard National Geodetic Survey brass marker cemented in a granite formation and stamped "VS 120, 1981," located at the geographic position of: Latitude 38° 53′ 51.″59866 Longitude 120° 00′ 20.″93116, a distance of 80,191.63 feet to an intersection in Lake Tahoe with a line extending between two points, the first of which is a standard National Geodetic Survey brass marker cemented in granite and stamped "EAGLE ROCK, 1981," which has a geographic position of: Latitude 39° 06′ 33.″17268, Longitude 120° 09′ 38.″06504, and the second being a granite stone with copper bolt identified as No. 1 (Initial 1894), being the first monumented point on the California-Nevada Oblique 1893-99 Boundary survey as determined and marked by the U.S. Coast and Geodetic survey; thence from said intersection point in Lake Tahoe S 48° 46′ 02.″80 E, 21,568.48 feet to said Monument No. 1 (Initial 1894); thence proceeding southeasterly along the oblique California-Nevada boundary line as surveyed and marked by the U.S. Coast and Geodetic Survey, under authority of the Act of August 5, 1892, 27 Stat. 357, during the period 1893-1899, to Point No. 1 described in the Interstate Compact Defining the Boundary Between the States of Arizona and California, executed on March 12, 1963, being a point common to Point No. 1 described in the Interstate Compact Defining A Portion of the Arizona-Nevada Boundary On The Colorado River, executed February 6, 1960. Bearings, distances, and geographic positions used hereinbefore are based upon the 1927 North American Datum and are denoted on the attached map, Exhibit A, which is incorporated herein by reference.

The intersection of the two lines described herein shall form the only angle point of the true California-Nevada state boundary within the waters of Lake Tahoe, which angle point shall be considered as satisfying the definition of the intersection of the 120th meridian west of Greenwich with the 39th parallel of north latitude as prescribed in the constitutions of California and Nevada.

THE PARTIES FURTHER AGREE that the decree of this Court should include directions pertaining to the allocation of the expenses of this action, as follows:

1. That the necessary expenses incurred by the Special Master incident to this litigation and all other proper expenses incurred jointly by the parties shall be equally borne by the parties.

2. That, except as provided in the aforesaid paragraph, each party shall bear its own expenses.

3. That any unexpended funds contributed by the parties to the Special Master for necessary expenses be returned to the parties in proportion to their contributions.

DATED: February 5, 1982

GEORGE DEUKMEJIAN, Attorney General
of the State of California
N. GREGORY TAYLOR,
Assistant Attorney General
JAN S. STEVENS,
DAVID B. JUDSON,
Deputy Attorneys General

By David B. Judson
DAVID B. JUDSON,
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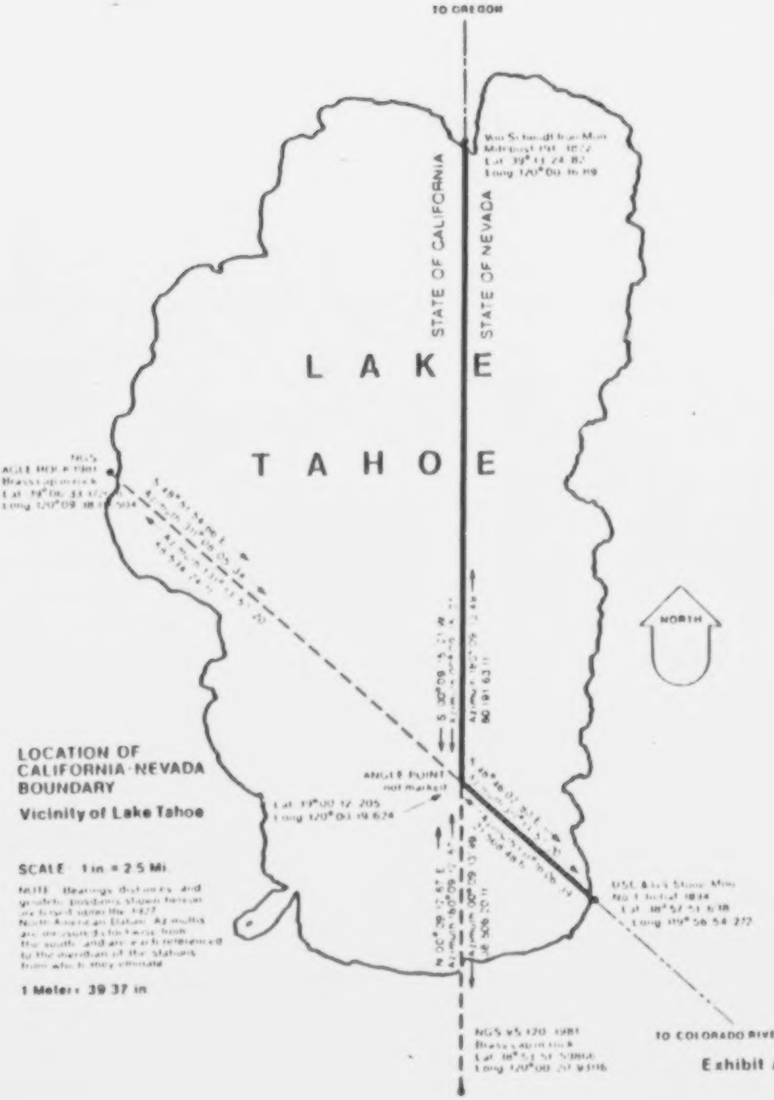
Counsel for Plaintiff,
State of California

DATED: February 5, 1982

RICHARD H. BRYAN, Attorney General
of the State of Nevada
LARRY D. STRUVE,
Chief Deputy Attorney General
HARRY W. SWAINSTON,
Deputy Attorney General

By Larry D. Struve
LARRY D. STRUVE,
Chief Deputy Attorney General
Counsel for Defendant,
State of Nevada


TO OREGON
STATE OF CALIFORNIA
STATE OF NEVADA
LAKE TAHOE
Von Schmidt Iron Mon
Milepost 1?1 1872
Lat 39° 11 24 82
Long 120° 00 16 89
NGS
EAGLE ROCK 1981
Brass cap in rock
Lat 39° 06 33 372
Long 120° 09 38 504
NORTH
ANGLE POINT
not marked
Lat 39° 00 12 205
Long 120° 00 19 624
USC & GS Stone Mon
No 1 Initial 1894
Lat 38° 57 51 618
Long 119° 56 54 272
NGS VS 120 1981
Brass cap in rock
Lat 38° 51 51 53866
Long 120° 00 20 9306
TO COLORADO RIVER

LOCATION OF CALIFORNIA-NEVADA BOUNDARY

Vicinity of Lake Tahoe

SCALE 1 in = 2.5 Mi

NOTE: Bearings, distances, and geodetic positions shown hereon are based upon the 1927 North American Datum. Azimuths are measured clockwise from the south and are each referenced to the meridian of the stations from which they emanate.

1 Meter = 39.37 in

Exhibit A

Appendix 2

SUPREME COURT OF THE UNITED STATES
STATE OF CALIFORNIA v. STATE OF NEVADA
ON BILL OF COMPLAINT

No. 73, Original Decided June 10, 1980

DECREE

For the purpose of giving effect to the opinion of this Court announced on June 10, 1980, 447 U.S. 125, and the stipulation of the parties entered into on February 5, 1982, and approved by the Special Master:

IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the location of the boundary between the States of California and Nevada is as hereafter specified:

Beginning at the Initial Point on the California-Nevada boundary as established under authority of the Act of June 10, 1872, 17 Stat. 358, by Allexey W. Von Schmidt in 1872 as an eight (8) inch square wood post set in a large mound of stone at the intersection of the 42nd parallel of north latitude along the southern boundary of the State of Oregon and the 120th degree of longitude west from Greenwich, each as reported by him; thence running southerly along said 1872 boundary as surveyed and marked by Allexey W. Von Schmidt to a cast iron monument designated as Von Schmidt Milepost 191 on said boundary; thence S 00° 09′ 15″.21 W along a line directed toward a standard National Geodetic Survey brass marker cemented in a granite formation and stamped "VS 120, 1981," located at the geographic position of: Latitude 38° 53′ 51″.59866 Longitude 120° 00′ 20″.93116, a distance of 80,191.63 feet to an intersection in Lake Tahoe with a line extending between two points, the first of which is a standard National Geodetic Survey brass marker cemented in granite and stamped "EAGLE ROCK, 1981," which has a geographic position of: Latitude 39° 06′ 33.″17268, Longitude 120° 09′ 38.″06504, and the second being a granite stone with copper bolt identified as No. 1 (Initial 1894), being the first monumented point on the California-Nevada Oblique 1893-1899 Boundary survey as determined and marked by the U.S. Coast and Geodetic Survey; thence from said intersection point in Lake Tahoe S 48° 46′ 02.″80 E, 21,568.48 feet to said Monument No. 1 (Initial 1894); thence proceeding southeasterly along the oblique California-Nevada boundary line as surveyed and marked by the U.S. Coast and Geodetic Survey under authority of the Act of August 5, 1892, 27 Stat. 357, during the period 1893-1899, to Point No. 1 described in the Interstate Compact Defining the Boundary Between the States of Arizona and California executed on March 12, 1963, being a point common to Point No. 1 described in the Interstate Compact Defining A Portion of the Arizona-Nevada Boundary On The Colorado River, executed February 6, 1960. Bearings, distances, and geographic positions used hereinbefore are based upon the 1972 North American Datum and are denoted on the attached map, Exhibit A, which is incorporated herein by reference.

2. That the intersection of the two lines described herein shall form the only angle point of the true California-Nevada state boundary within the waters of Lake Tahoe, which angle point shall be considered as satisfying the definition of the intersection of the 120th meridian west of Greenwich with the 39th parallel of north latitude as prescribed in the constitutions of California and Nevada.

3. That the necessary expenses incurred by the Special Master incident to this litigation and all other

proper expenses incurred jointly by the parties shall be equally borne by the parties.

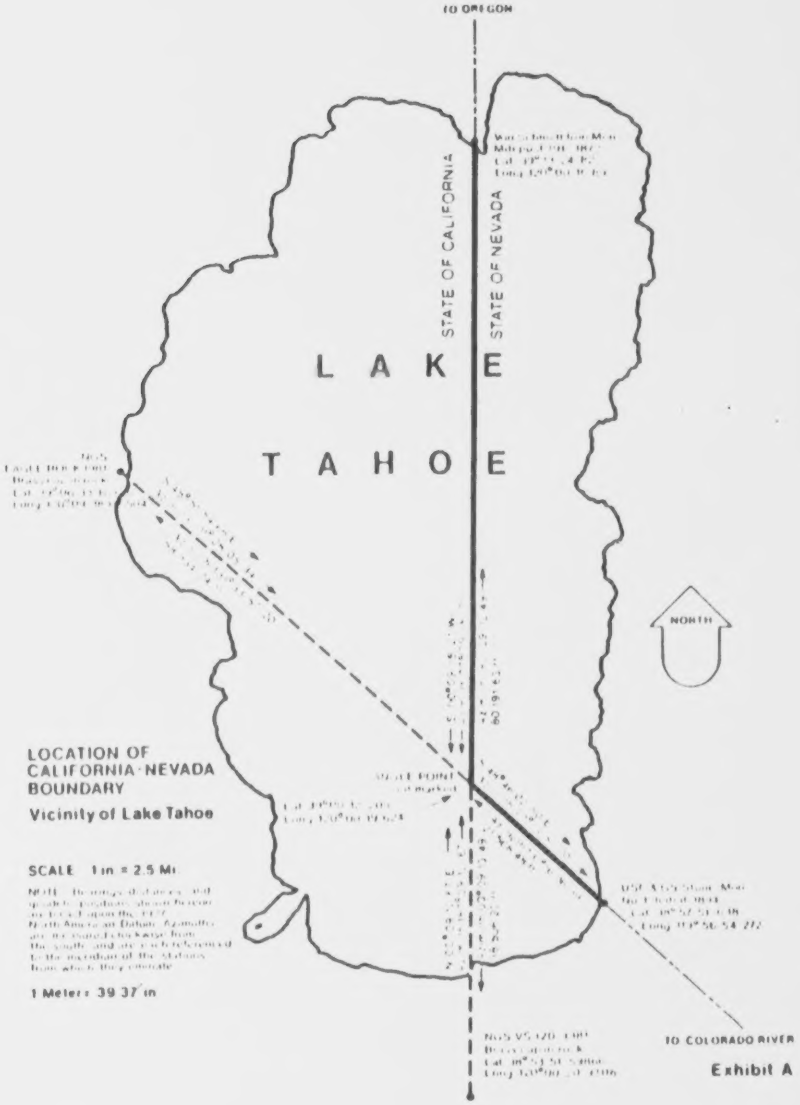
4. That, except as provided in paragraph 3 herein, each party shall bear its own expenses.

5. That any unexpended funds contributed by the parties to the Special Master for necessary expenses be returned to the parties in proportion to their contributions.

DATED: ____________

Supreme Court of the United States

____


TO OREGON
STATE OF CALIFORNIA
STATE OF NEVADA
LAKE
TAHOE
NORTH
TO COLORADO RIVER

LOCATION OF CALIFORNIA-NEVADA BOUNDARY

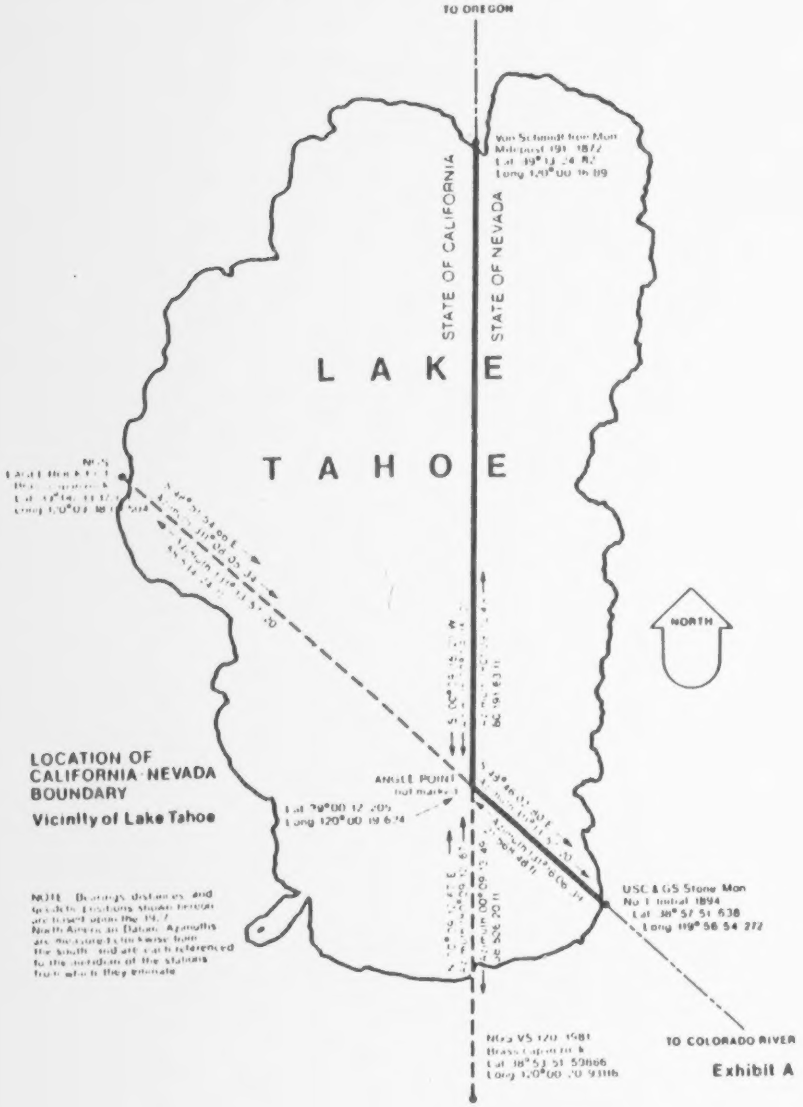
Vicinity of Lake Tahoe

SCALE 1 in = 2.5 Mi

1 Meter = 39.37 in

Exhibit A

Appendix 3


TO OREGON
Von Schmidt Iron Mon
Milepost 191 1872
Lat 39°13 24 82
Long 120°00 16 89
STATE OF CALIFORNIA
STATE OF NEVADA
LAKE
TAHOE
NGS
NORTH
LOCATION OF CALIFORNIA-NEVADA BOUNDARY
Vicinity of Lake Tahoe
ANGLE POINT
not marked
Lat 39°00 12 205
Long 120°00 19 634
USC & GS Stone Mon
No 1 Initial 1894
Lat 38°57 51 638
Long 119°56 54 272
NOTE Bearings distances and geodetic positions shown hereon are based upon the 1927 North American Datum. Azimuths are measured clockwise from the south and are each referenced to the meridian of the stations from which they emanate
NGS VS 120 1981
Brass Cap in rock
Lat 38°53 51 59866
Long 120°00 20 93116
TO COLORADO RIVER
Exhibit A

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 73, Original

STATE OF CALIFORNIA, PLAINTIFF

v.

STATE OF NEVADA

ON THE REPORT OF THE SPECIAL MASTER

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of February 19, 1980, inviting the Solicitor General to express the views of the United States.

1. Although contemplating future proceedings and making recommendations with respect to them (which we discuss below), the present Report of the Special Master primarily tenders for the Court's approval a determination of the true boundary between the States of California and Nevada. The definition of the two segments of that boundary—one running north-south along the 120th meridian, the other running obliquely from the intersection of the north-south line and the 39th parallel to the intersection of the 35th parallel and the Colorado River—is not in dispute. But, because several inconsistent surveys have purported to map those lines, or portions of them,

the question arises which survey should be accepted as effectively locating the boundary, or whether a new survey should be run.

We endorse the Special Master's solution of the problem. He concluded that the last complete survey of the north-south boundary, the so-called Von Schmidt line of 1872, should be adopted for that segment, and the subsequent Coast and Geodetic Survey line of 1893-1899 should be adopted for the oblique segment of the boundary. Report 49, para. 1. Both of these lines were run by United States surveyors, pursuant to special Congressional direction. Report 22, 27-28. But it is not for that reason that the Master preferred them. Nor do we support his conclusion on that ground. The Master reached his recommendation because these two surveys were the latest, the most complete and the most accurate (Report 29-34), and, primarily, because both States have acquiesced in treating these lines as the interstate boundary for more than a century in one case and some 80 years in the other. Report 35-37, 45.

In our view, the last consideration is dispositive. In the case of the oblique boundary, both States formally adopted the Coast and Geodetic Survey line by statute in 1901 and 1903. Report 45. While the Von Schmidt north-south line was not similarly confirmed by State legislative action (Report 35), it is undisputed that, ever since 1873, that line has been used by both States in the exercise of jurisdiction. Report 45. In these circumstances, we believe the Master was fully justified in invoking the doctrine of prescription and acquiescence as laying the matter to rest. Report 41-48. See *Ohio* v. *Kentucky*, 410 U.S. 641, 649-651 (1973), and cases there cited.

2. After recommending the lines which, in his view, represent the true boundary between the two States, the Special Master turns to minor technical matters. Because the recommended north-south line and the oblique line do not intersect exactly at the 39th parallel (as, in principle, they should), the question arises how they should be connected. The Master urges that the State parties should be free to resolve that matter by agreement, failing which he would recommend a solution. Report 49-50, para. 2. In fact, as we read their respective briefs, California and Nevada have already agreed that the appropriate course, assuming the Court approves the Master's major boundary determinations, is to extend the oblique boundary in a straight line to the point where it meets the north-south boundary (Nev. Br. 45, 51; Cal. Br. 49-51),[1] thereby avoiding what California aptly characterizes as "unsightly dog-legs" in the middle of Lake Tahoe (Cal. Br. 50). The simplicity of this resolution commends it, in our view, and we urge the Court to accept that determination.

The Special Master also seeks authority to arrange for any necessary further resurveying of the lines he has recommended if the parties disagree as to their location on the ground. Report 50, para. 3. The cost would be borne equally by the two States. *Ibid.* Although we are not aware of any dispute as to the location of these lines, again, the Master's recommendation seems entirely reasonable. The United States would, of course, fully cooperate in any necessary work by supplying all relevant information at the disposal of the Government.

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[1] We here refer to the documents entitled "Nevada's Exceptions to Report of Special Master and Brief" and "Plaintiff's Brief in Support of Special Master's Report," both filed in December 1979.

3. We come now to the Special Master's final recommendations (Report 50-51, paras. 4-6), suggesting further proceedings to settle the title consequences of a ruling by the Court endorsing his boundary determinations. That matter arises because, in May 1979, California submitted to the Special Master a Motion to File Amended Complaint and Bifurcate Issues which alleged that the United States has confirmed or clear-listed lands in California to Nevada, and vice-versa, in derogation of the controlling grant statutes; that most such lands were in turn patented to individuals by the State which had obtained federal approval; and that the validity of these State selections and the patents issued under them is in doubt. See Report 11-13.

a. The existing parties appear to agree that "title" proceedings to resolve these questions, if appropriate at all, ought to follow, rather than precede, this Court's final decision fixing the interstate boundary. See Report 14. For our part, we endorse that course. Any effort to quiet titles along the boundary must obviously await a binding determination as to its location, still disputed between the States. There remains to consider, however, whether such proceedings, in this Court, are necessary, and, if so, what role the United States should play.

b. If all the territory disputed between the two States were still held by the United States—whether as part of the public domain or in reserved status—or if the lands had been patented directly by the United States to individuals, fixing the interstate boundary would affect only political jurisdiction and no further title proceedings would be necessary. But substantial acreage has passed into State hands and most of it, in turn, to private owners, and it appears that some of these selections were made, and subsequent patents issued, by each State in what is the territory of its neighbor—or at least by Nevada in California. California has questioned the validity of such extraterritorial selections and patents and seeks leave to file an amended complaint putting the matter at issue. Nevada apparently asserts that at least private titles, although derived from a sovereign acting beyond its jurisdiction, are not open to challenge, but seems to agree that the matter should be settled. In these circumstances, a genuine controversy exists and, when the boundary is finally fixed, further proceedings to resolve the title questions seem unavoidable.

It might be supposed that the title consequences could be resolved by administrative proceedings within the Department of the Interior. But it is far from clear that that Department retains jurisdiction to correct any error in approving or "clear-listing" selections made by one State in the territory of the other, especially where patents to individuals have issued. Moreover, neither State suggests that it would accept such administrative determinations if undertaken. Nor does it seem possible to finally resolve the matter in a quiet title action initiated in a district court by one State against the United States under 28 U.S.C. 2409a. Insofar as the States themselves are at odds over the question, this Court is the only federal forum with jurisdiction. 28 U.S.C. 1252(a)(1); *California* v. *Arizona*, 440 U.S. 59, 61, 63 (1979). Accordingly, the Special Master was correct, we believe, in recommending that California be granted leave to file its amended complaint (Report 50, para. 4)—albeit without presently joining any federal defendants.

c. We reach, finally, the question of the role of the United States in any such further proceedings. Although he has recommended allowance of California's amended complaint, which names the United States and the

Secretary of the Interior as added defendants, the Special Master clearly intends to reserve the matter of joining the federal Government until after he has consulted further with the present parties and the Office of the Solicitor General. Report 50, para. 5. We welcome that course.

To be sure, there is no longer any doubt that the United States can be joined as a defendant if it asserts title to any of the lands in dispute. *California* v. *Arizona, supra*. Nor do we suppose this Court lacks jurisdiction to entertain an action in which both States, in controversy with each other, seek to compel the Department of the Interior to rescind or confirm earlier administrative decisions approving erroneous State selections, if that Department still has competence in the matter. See 5 U.S.C. 702. But it may well be that the United States will disclaim all interest in the disputed lands and the Master may conclude that the Department of the Interior has long since lost jurisdiction to take any curative action. In that event, it would not seem necessary or appropriate to join the United States or its officers in the contemplated title proceedings.

Because the United States has not yet reached a final conclusion as to its interest or competence in respect of the lands at issue, the Master's recommendation seems entirely appropriate. Should the United States fail, promptly after this Court's boundary determination, formally to disclaim all interest in the contested acreage, or fail to satisfy him that the Government is powerless to take remedial action, the Special Master, we suggest, should be authorized to join the United States as a party defendant in the future proceedings. There is no occasion to prejudge the outcome of the contemplated consultations at this stage. At all events, the United States would, of course, afford the Master all reasonable assistance in carrying out his task.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

LOUIS F. CLAIBORNE
Deputy Solicitor General

MARCH 1980

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CALIFORNIA *v.* NEVADA

ON REPORT OF SPECIAL MASTER

No. 73, Orig. Argued April 14, 1980—Decided June 10, 1980

Held:

1. The Special Master was fully justified in invoking the doctrine of acquiescence in concluding that the true boundary between California and Nevada is that located by two surveys, funded by congressional appropriations in 1872 and 1892, since both States have acquiesced in those boundary lines from the time they were drawn. The issue of whether Congress had power to determine the lines even though an 1863 joint survey had been commissioned by the States, which both adopted the results thereof by statute, need not be decided, since it is not necessary that there be a particular relationship between the *origins* of a boundary and the legal *consequences* of acquiescence in that boundary. Longstanding acquiescence by the States can give the boundary lines the force of law whether or not federal authorities had the power to draw them. Pp. 6–7.

2. However, the Special Master's reference will not be expanded to authorize him to determine whether the United States should be made a party to the case and to make recommendations as to the quieting of title on various disputed border lands. The ownership and title questions that remain typically will involve only one or the other State and the United States, or perhaps various citizens of those States, not disputes between the States. Thus, even if some of those questions do fall within this Court's original jurisdiction, they will not fall within its exclusive jurisdiction, and litigation in other forums is an appropriate means of resolving those questions. Pp. 7–8.

Exceptions to Special Master's report overruled, and report adopted in part.

BRENNAN, J., delivered the opinion for a unanimous Court.

SUPREME COURT OF THE UNITED STATES

No. 73, Orig.

State of California, Plaintiff,
v.
State of Nevada.

On the Report of the Special Master.

[June 10, 1980]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The Report of the Special Master tenders for the Court's approval his determination of the true boundary between the States of California and Nevada. That boundary was the subject of numerous surveys in the latter half of the 19th century, and the central question presented in this original action is which, if any, of the lines which resulted properly marks the rugged border between the two States.[1] The Special Master combed the voluminous record and concluded that in combination the two most recent surveys had fixed a boundary to which both States have acquiesced for the better part of a century. Applying the doctrine of prescription and acquiescence, he concluded that the boundary so fixed was the proper one. Nevada takes exception to that determination on several grounds. We overrule those exceptions and, with the qualifications hereinafter noted, approve and adopt the Special Master's report.

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[1] California instituted this original action on April 22, 1977, when it filed its Motion for Leave to File Complaint and Complaint. On June 29, 1977, we granted that motion and appointed the Special Master. Basically, California sought a declaration that the currently recognized line dividing the two States was in fact the lawful boundary. As counsel for the State characterized it at oral argument, the suit was in the nature of a quiet title action and was precipitated by growing doubts about the geographic accuracy of the existing line as well as concerns regarding the validity of certain titles which depended upon the location of the border. The Special Master's report was filed in this Court on October 9, 1979, and we set Nevada's exceptions and related matters for oral argument, — U. S. — (1980).

I

The two straight-line segments that make up the boundary between California and Nevada were initially defined in California's Constitution of 1849. The first, the "north-south" segment, commences on the Oregon border at the intersection of the 42d parallel and the 120th meridian and runs south along that meridian to the 39th parallel. And the second, the "oblique" segment, begins at that parallel and runs in a southeasterly direction to the point where the Colorado River crosses the 35th parallel. Cal. Const. of 1849, Art. XII. In 1850, when California was admitted to the Union, Congress approved the 1849 Constitution, and with it California's eastern boundary. Act of Sept. 9, 1850, ch. 50, 9 Stat. 452.

On the same day that it admitted California, Congress established a territorial government in the area immediately to the east. The organic act for that new territory—which was then called Utah—stated that it was to be "bounded on the west by the State of California." Act of Sept. 9, 1850, ch. 51, 9 Stat. 453. Eleven years later, the territory of Nevada was created out of Utah. Congress indicated in the organic act that Nevada might include portions of what was then California, but with the proviso that "so much of the Territory within the present limits of the State of California shall not be included within this Territory until the State of California shall assent to the same by an act irrevocable without the consent of the United States. . . ." Act of March 2, 1861, ch. 83, 12 Stat. 209, 210. No assent was ever given by California. Accordingly, when Nevada was admitted as a State in 1864 its western boundary and California's eastern one remained congruent.[3]

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[3] Nevada's Constitution stated that its boundary would proceed "in a North Westerly direction along [the oblique section of the] Eastern bound-

Notwithstanding brief and incomplete surveying efforts in the decade after California was admitted, the actual location on the ground of that State's eastern boundary remained highly uncertain—so much so that fighting broke out over the precise whereabouts of a small valley on the north-south line above Lake Tahoe, and a border town along the oblique line found itself claimed as the seat of both a Nevada and a California county.[3] These difficulties led California and Nevada to commission a joint survey of their border. Conducted in 1863, that survey located what is known as the Houghton-Ives line from the Oregon border south along the 120th meridian to a point in Lake Tahoe and then southeast for about 103 miles along the oblique line in the direction of the relevant point on the Colorado River. The remaining 300 plus miles of the oblique border were not surveyed.[4]

Both California and Nevada adopted the Houghton-Ives line by statute, but its significance was to be short-lived. In 1867–1868 Daniel G. Major surveyed the Oregon-California

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ary line of the State of California to the forty third degree of Longitude West from Washington [and then] North along said forty-third degree of West Longitude, and said Eastern boundary line of the State of California to the forty-second degree of North Latitude. . . ." Nev. Const. art XIV, § 1. Although it turns out that the 43d degree of longitude west from Washington does not exactly coincide with the 120th meridian west of Greenwich—which was the north-south reference in the California Constitution—the Special Master concluded that the Congress that approved Nevada's Constitution was of the view that the two lines were identical. Certainly the language of the Nevada Constitution supports this conclusion by seeming to equate the 43d degree of longitude west of Washington with the eastern boundary of California. In any event, we need not explore the matter further since it would be relevant only were we to require a new survey of one or the other longitudinal line, and we do not find such a new survey necessary.

[3] Indeed, the town—Aurora—elected representatives to both the California and Nevada Legislatures in 1862, and those representatives apparently became speakers of their respective legislatures.

[4] Two years later one James S. Lawson extended the oblique portion of the Houghton-Ives line another 73 miles.

boundary for the General Land Office. One step in his work was to locate the intersection of that boundary and the 120th meridian. This he did, at a point more than two miles west of that meridian as marked by Houghton-Ives. This discrepancy[5] eventually led the Commissioner of the General Land Office to recommend that Congress appropriate money for a full survey of the eastern boundary of California. His recommendation was followed in 1872.

The new survey was conducted by Allexey W. Von Schmidt. While originally instructed to commence his north-south line at the point located by Daniel G. Major, Von Schmidt concluded that the actual 120th meridian lay not only east of "Major's corner," but six-tenths of a mile east of the Houghton-Ives line as well. Accordingly, Von Schmidt marked a new north-south line starting at this location. His survey of the oblique boundary also had its surprises. From the intersection of his north-south segment and the 39th parallel he set off in what he thought was the direction of the intersection of the Colorado River and the 35th parallel. Unfortunately, the Colorado River had shifted since the point for which he was aiming had been marked, and rather than end at the wrong place he attempted to correct the line he was marking. It later turned out that his corrections were not complete and his line not entirely straight. But linear or not, his work did generate a boundary. And, although neither State adopted it by statute, the Von Schmidt survey won gradual acceptance in both California and Nevada.

In the 1880s, however, substantial doubts about the accuracy of the oblique segment of the Von Schmidt line were voiced in Washington. As a result, Congress appropriated funds in 1892 for a new survey of that segment. The survey was undertaken by personnel of the United States Coast and Geodetic Survey and conducted over a period of several years. It yielded a new oblique line and determined that the one charted by Von Schmidt had been neither straight nor accurate. Both States adopted the U. S. Coast and Geodetic Survey line by statute—California in 1901 and Nevada in 1903.[6]

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[5] A third survey, conducted in the summer of 1872 near the Oregon border, contributed to the confusion by concluding that the 120th meridian lay to the east of the locations pinpointed by both Major and Houghton-Ives.

The Special Master concluded that the Von Schmidt survey of the north-south line and the U. S. Coast and Geodetic Survey one of the oblique line were the most recent and accurate surveys available. While noting that Von Schmidt had not been entirely accurate, the Master found that the north-south line that resulted from his survey had been consistently and routinely recognized and accepted by agencies and departments of the State of Nevada for more than a century. That the Houghton-Ives line was the first north-south boundary marked and the only one approved by statute was, he found, beside the point because as a practical matter that boundary had been superseded a decade after it was established and neither State had objected.[7] As for the oblique boundary, the master found that the U. S. Coast and Geodetic Survey line had not only been adopted by statute, but accepted and used by the two States for nearly 80 years. Since both States had treated these lines as the boundary from the time they were drawn, the master invoked the doctrine of acquiescence to determine that together they in fact constitute the true and correct interstate boundary.

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[6] Nevada's statute was in effect when the present litigation was commenced, although it has subsequently been repealed.

[7] California notes that Nevada welcomed the Von Schmidt survey at the time it was conducted. Indeed, the Surveyor General of that State remarked that "within a year the State will be inclosed by an actual surveyed line and monuments, and the troubles heretofore existing, to State and county officials, in dealing with an imaginary line, will be entirely and forever obviated." Report of the Surveyor and State Land Register of the State of Nevada for the years of 1871 and 1872.

II

The State of Nevada's primary contention is that the Special Master's reliance upon the doctrine of acquiescence was error. Basically, the argument is that once Nevada and California had conducted the 1863 joint survey which produced the Houghton-Ives line the Federal Government had no constitutional authority to mark a different line which had the effect of removing territory from one State and granting it to the other. Since the Congress was without power to determine the Von Schmidt and U. S. Coast and Geodetic Survey lines, the argument continues, they are without legal effect. And because States may not confer upon the Federal Government a power which the Constitution does not vest in it, acquiescence in those lines cannot make them lawful. Thus, Nevada concludes, either (1) Congress is constitutionally empowered to redraw the boundaries of the several States, in which case the Von Schmidt and Geodetic Survey lines may be upheld regardless of acquiescence, or (2) Congress is constitutionally powerless to alter those boundaries, in which case no mere century of acquiescence can convert a usurpation into law.

The flaw in this argument is that it assumes that there must be a particular relationship between the *origins* of a boundary and the legal *consequences* of acquiescence in that boundary. In fact, however, no such relationship need exist. Longstanding acquiescence by California and Nevada can give the Von Schmidt and Geodetic Survey lines the force of law whether or not federal authorities had the power to draw them. And the determination that the two States' conduct has had precisely this effect, therefore, does not place any sort of constitutional imprimatur upon the federal actions involved. See *Ohio* v. *Kentucky*, 410 U. S. 641, 648–651 (1973); *Indiana* v. *Kentucky*, 136 U. S. 479, 509–510 (1890). Accordingly, we need not address the issue of federal power to which Nevada adverts. It is enough that California claims and has always claimed all territory up to a specifically described boundary—the 120th meridan and the oblique line with which it connects—and that both States have long acquiesced in particular lines marking that boundary.[8] If Nevada felt that those lines were inaccurate and operated to deprive it of territory lawfully within its jurisdiction the time to object was when the surveys were conducted, not a century later. *Ohio* v. *Kentucky, supra,* at 649. In consequence, we hold that in these circumstances the Special Master was fully justified in invoking the doctrine of acquiescence.[9]

III

Having determined that the Special Master's resolution of the boundary dispute was proper, we turn to his recommendations regarding the quite separate issue of ownership of various disputed border lands. This matter is here on California's Motion to File a Second Amended Complaint and Bifurcate Issues, which seeks further proceedings before the Special Master after the boundary questions are determined. Specifically, the United States has apparently confirmed or "clear-listed" to California and Nevada certain parcels that turn out to be on the "wrong" side of the boundary between those States. The Special Master was of the view that California's motion should be allowed and that he should be authorized (1) to determine whether the United States should be made a party to this case and (2) to make recommendations as to the quieting of title on various border lands.

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[8] Nor is Nevada's position saved by the contention that California could not profit by the doctrine of acquiescence because its claim to the lands up to the Von Schmidt and U. S. Coast and Geodetic Survey lands was not made under color of title or claim of right. The fact is that California's claim has always been for all lands on its side of the boundary described rather specifically in its Constitution. So long as its claims were made under a survey that purported to reflect that boundary, it had colorable title and a claim of right.

[9] Several subsidiary issues relating to the California-Nevada border are considered in the Special Master's recommendations. First, it turns out that Von Schmidt's north-south line and the U. S. Coast and Geodetic Survey oblique line do not intersect at precisely the 39th parallel, as in theory they should. The Special Master suggests that the two States be given the opportunity to determine by agreement the point in Lake Tahoe where the two lines meet. Failing such an accord, he indicates that he would recommend a solution; but this probably will not be necessary since the parties are apparently in agreement that if the balance of the Master's report is accepted the best course is to extend the oblique line in a northwesterly direction to the point where it crosses the north-south line. This solution to the problem is entirely permissible. Cf. *New Hampshire* v. *Maine,* 426 U. S. 363 (1976). Second, the Master recommends that he be authorized to arrange for surveys, at the parties' expense, if necessary to resolve disputes over the precise location of portions of either of the lines we approve today. That, too, seems appropriate. And third, he states that we should reserve the taxing of costs until after a further report—a suggestion which we will follow since the possibility of partial surveys would make an assessment at this time premature.

We decline at this point to expand the Special Master's reference. The ownership and title questions that remain typically will involve only one or the other State and the United States, or perhaps various citizens of those States. Disputes between California and Nevada are not in the offing.[10] In consequence, even if some of the ownership questions to come do fall within our original jurisdiction, they will not fall within our exclusive jurisdiction. 28 U. S. C. § 1251. Under these circumstances we see no reason to refer the matter to the Special Master. On the contrary, litigation in other forums seems an entirely appropriate means of resolving whatever questions remain.

In sum, we overrule Nevada's exceptions and approve and adopt the Special Master's Report and Recommendations except insofar as those recommendations would allow California's Second Amended Complaint and permit proceedings relating to the ownership of disputed lands on the California-Nevada boundary.

So ordered.

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[10] At oral argument, counsel for the State of California conceded that he knew of no instance in which both States claimed the same parcel.

TICOR TITLE INSURANCE

October 4, 1983

The Honorable Malcolm Wallop
Subcommittee on Public Lands
and Reserve Water
Room SD 308
Dirksen Senate Office Building
Washington, D.C. 20510

In Re: Proposed Argument in Favor of the
California-Nevada Statute (S. 1860)

Dear Senator Wallop:

The common boundary of California and Nevada is defined primarily by reference to lines of latitude and longitude. However, its exact location on the ground has been uncertain from the time those States were admitted to the Union because of inaccessibility of the land, and conflicting surveys. During the last half of the 19th century a great deal of real property located within a few miles of the boundary was transferred by the United States to each of the States. According to the boundary line established in 1980 by the United States Supreme Court many thousands of acres of that real property are, in fact, located within the boundaries of the other State. Language in some of the federal statutes authorizing such transfers to a state, limit the transfers to land located within the transferee state. As a result, the effectiveness of various transfers may be questioned. However, only a few questions have been raised, and most of this real property has been transferred into private ownership by the State which was named as transferee. The real property very generally has been recognized as properly transferred by the United States. Subsequent deeds and other instruments affecting it have been relied on as valid by federal, state and local governments and by the public. Much of the property is highly developed and very valuable.

This statute is proposed to confirm the validity of the original transfers from the United States and thereby remove any question concerning the legal sufficiency of titles to and other interests in that land. Most of these titles and interests can be traced back for over a hundred years.

The boundary line selected by the Supreme Court in 1980 consists of a survey line established from the Oregon border to

Ticor Title Insurance Company of California 6300 Wilshire Boulevard, P.O. Box 92792, Los Angeles, California 90009

Lake Tahoe in the early 1870s and known as the Von Schmidt survey, and, from the point in Lake Tahoe to the Colorado River, a line surveyed by the United States Coast and Geodetic Survey in the 1890s. The line from Lake Tahoe to the Colorado River was adopted as the boundary line by statutes of each State around 1900. North of the Lake another survey line, located about a half mile or more west of the Von Schmidt line and known as the Houghton-Ives line, had been completed in the early 1860s and accepted by the two States as the boundary. However, both States began using the Von Schmidt line as the boundary shortly after the completion of that survey, and have continued to use it to the present time. Governmental and private acts of all kinds have been based on the Von Schmidt line.

South of Tahoe, Von Schmidt had continued his survey toward the Colorado River, but it was not completed. His line was treated as the boundary for a time. When the Coast and Geodetic survey was made it crossed the Von Schmidt line at least twice. Other surveys were made of parts of the boundary both before and after the Von Schmidt line was surveyed; actual locations of the boundary remained uncertain along portions of the line for many years. However, the line now established by the Court north of the Lake has been accepted generally as the boundary for over a hundred years and south of Tahoe since about 1900. Plats indicating some of the different surveys, and showing the situation for the entire boundary, and specifically at the Oregon border and at the north and south ends of Lake Tahoe, are attached. These plats may not be accurate as to scale.

Many thousands of acres of land have been transferred to one State or the other by the United States, which land, according to Supreme Court decree, now has been established as being located physically in the other State. Much of this land was transferred pursuant to a federal statute such as the School Lands Act (Act of March 3, 1853, 10 U.S. Stats. 244) which authorized the transfer to a state of title to certain amounts of land within that state. It was assumed when these transfers were made that the law was being complied with, and that the land was within the transferee state. These transfers to "the wrong state" appear to have resulted from the inaccuracies in, and conflicts among, the surveys of the boundary lines and of the parcels themselves. These inaccuracies and conflicts, in turn, resulted from the rough terrain and inaccessability of much of the land, and the lack of precision in surveying instruments and procedures then in use.

Despite the fact that the land in question has been established by the 1980 decree as being outside the boundaries of the transferee State, each of the States has treated the land it received as properly transferred to it. Most of this real property has been patented or otherwise transferred into private ownership by the State designated as transferee. The private owners have dealt with it with no question being raised concerning the validity of the titles originating with the United States. Private owners have sold it, improved it, created mortgage or other liens on it; taxes have been assessed and paid to the State and to local counties and cities within the State where the land is located. Much of this land has been highly developed for commercial or residential purposes and, in total, the land probably is worth hundreds of millions of dollars. One such parcel, for example, is roughly triangular and is located at the north end of Lake Tahoe. It runs north along the Von Schmidt line from the Lake at the property known as the CalNeva Lodge for about half a mile. Then the boundary of the parcel moves west to the Lake and returns along the Lake shore to the point of beginning. This very valuable area is located in California, but originally was transferred by the United States to Nevada, and transferred by Nevada to private owners. Following the acquisition by the private owners, the triangular portion has been assumed for all purposes to be located in California, subject to the laws and legal rules of California; and title of the private owners has been accepted universally as being valid. There are many other parcels, both north and south of the Lake and transferred to each State, where an almost identical situation exists, although few of those parcels are as valuable and as intensively developed as the one described.

The only objection to the validity of transfers from the United States to either California or Nevada of land outside the boundaries of the transferee State appears to come from some agencies of the federal government. An opinion of the Solicitor General of the Department of the Interior during the 1960s refused to recognize a transfer by the United States to California of land south of Tahoe and west of the Von Schmidt line, but east of the Coast and Geodetic line. The land is in Nevada according to the recent Supreme Court decree, but was assumed to be in California when the survey of the property was completed during the 1890s prior to the completion of the Coast and Geodetic survey.

There also are Supreme Court cases which have resolved ownership problems when each of two states has conveyed the same property to a different private owner on the assumption that the land was located within its boundaries. No situations have been discovered where California and Nevada have separately conveyed the same parcel of land to different owners. Many sections and agencies of the United States government, like the State and local governments and the public in general, have treated the title to the land in question as being valid. For example, for many years the documentary transfer tax was collected; titles and other interests in land are recognized in the federal courts; and federal taxes have been imposed, collected and liens filed on the basis of the private titles being valid. There is law that the United States is estopped from questioning the validity of transfers it has made when the title has passed into private ownership. However, the question of the effectiveness of a transfer of land to a state other than the one where the land is located appears not to have been decided directly. The question should be resolved in order to confirm the almost universal acceptance of the validity of the transfers and in order to prevent any future difficulties for parties who have relied on the validity of the titles believed to have been established.

The Supreme Court concluded in the California-Nevada boundary case that while it had the jurisdiction to resolve any title problems that its jurisdiction was not exclusive. The Court stated that "...litigation in other forums seems an entirely appropriate means of resolving whatever questions remain." This solution would require a very substantial and unnecessary expenditure of time and money by courts, lawyers, and interested parties. It could leave some problems unresolved for years.

The confirmation of the validity of the transfers of title from the United States to California and Nevada respectively can be resolved promptly by a much simpler, faster and less expensive procedure. The proposed statute can be enacted to confirm the validity of the transfers by the United States. Such a statute will carry out the intention of the United States, the States and all other governmental units or agencies, and of each of the private parties who has acquired an ownership of or some other interest in or lien upon the land. And it will verify the general and honest assumptions made for most of or more than a century that reliance on the validity of those titles is justified.

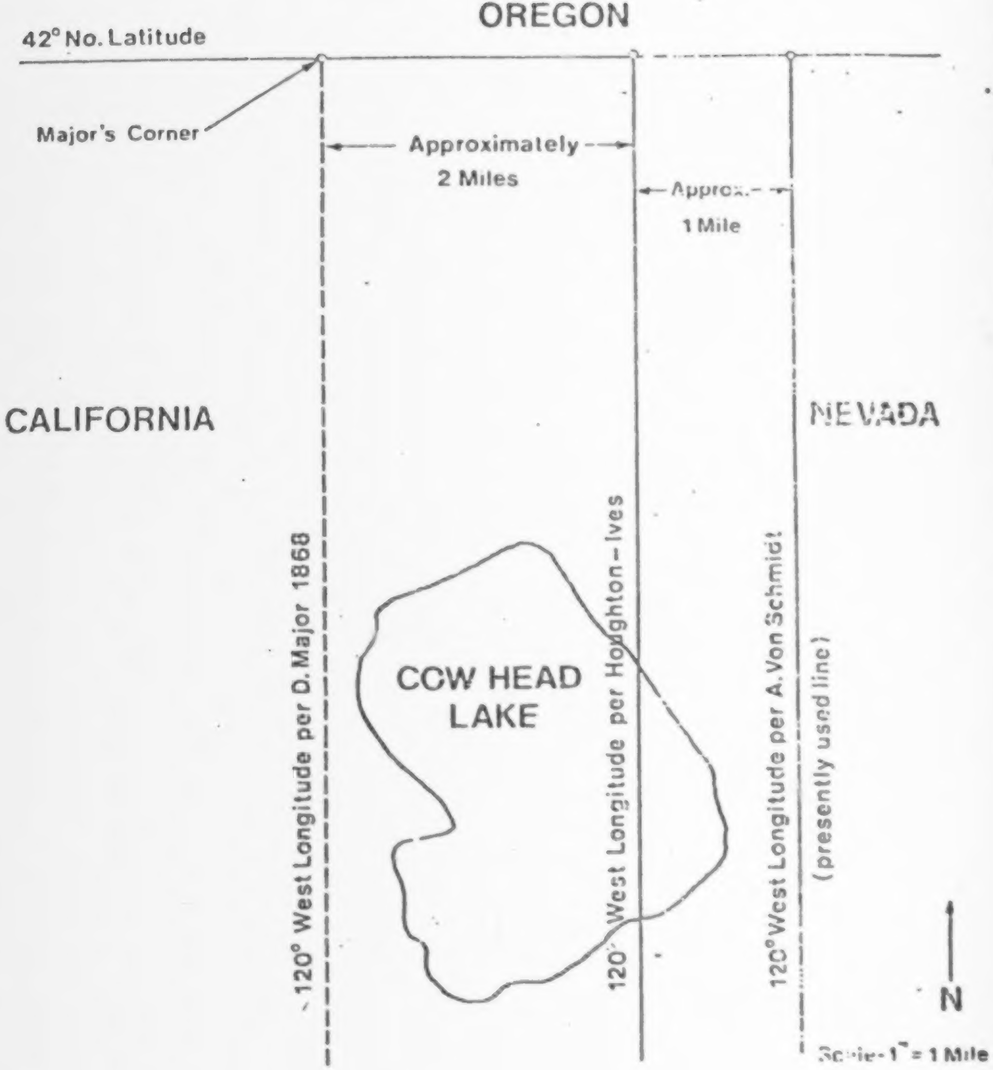
Very truly yours,

Harold Wandesforde

Harold Wandesforde
Vice President

HW/je
Enclosure

LINES AT ISSUE
IN VICINITY OF
42° NORTH LATITUDE


OREGON
42° No. Latitude
Major's Corner
Approximately 2 Miles
Approx. 1 Mile
CALIFORNIA
NEVADA
120° West Longitude per D. Major 1868
120° West Longitude per Houghton – Ives
120° West Longitude per A. Von Schmidt
(presently used line)
COW HEAD LAKE
N
Scale - 1" = 1 Mile

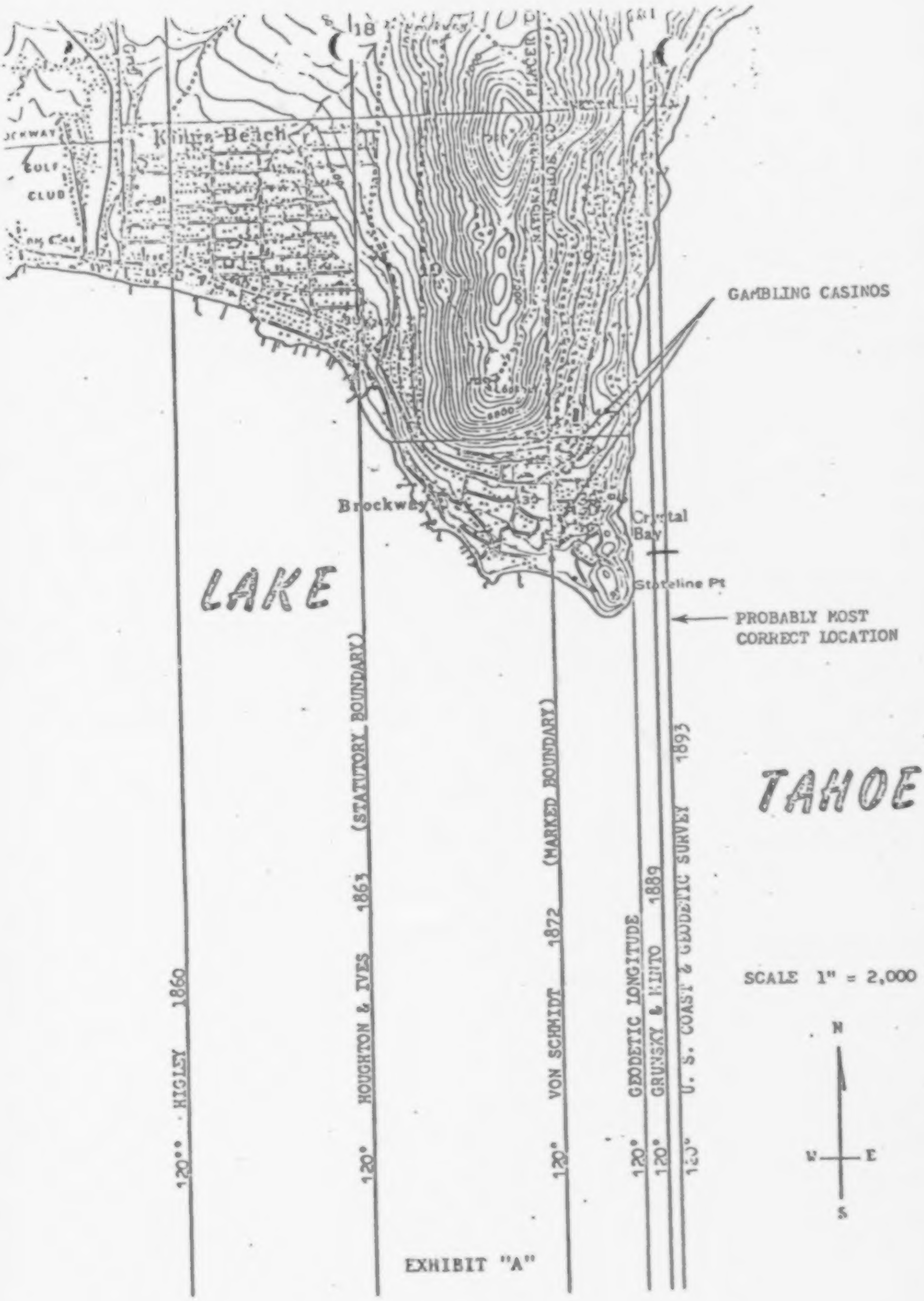
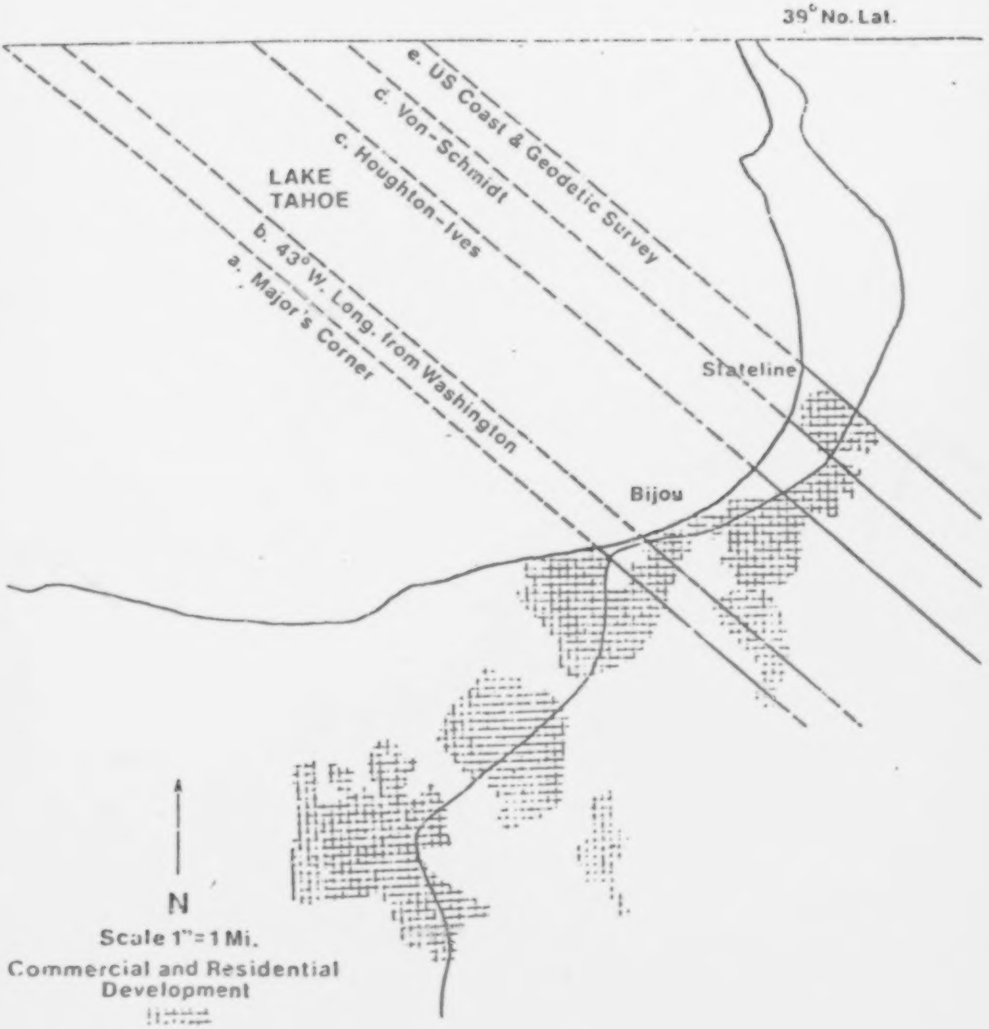
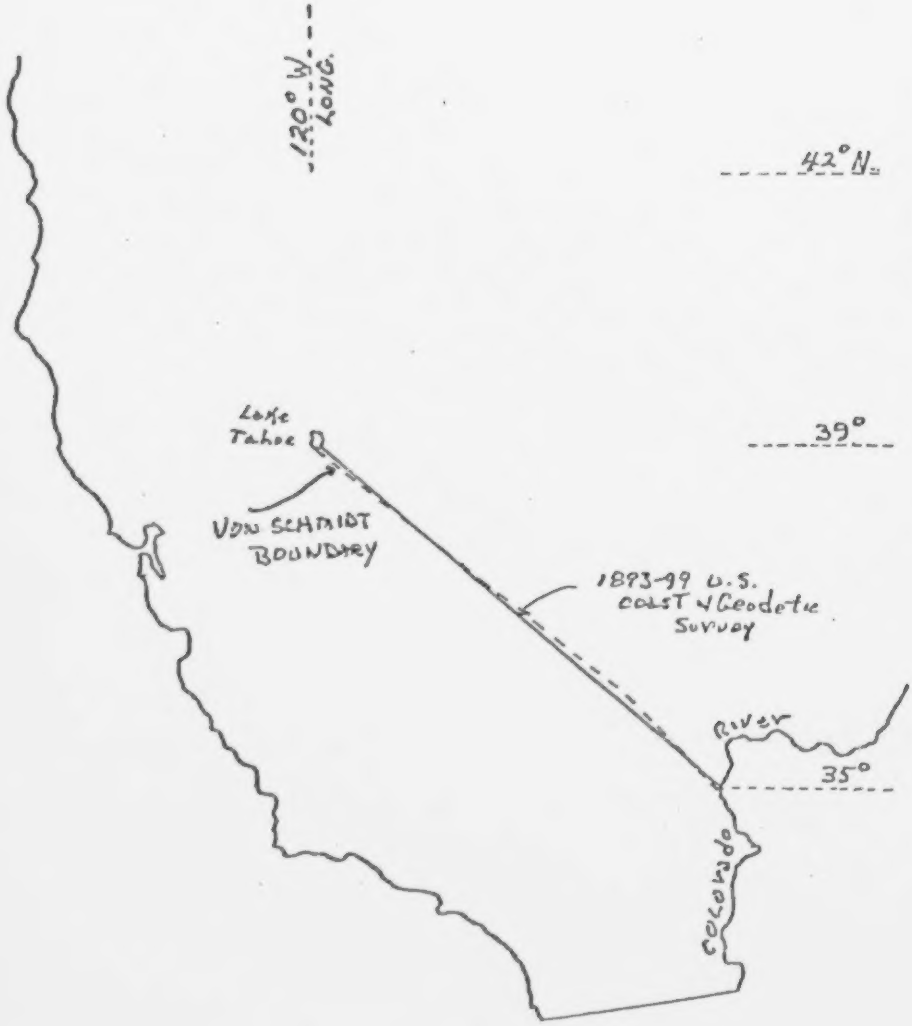

Kings Beach
GOLF CLUB
Brockway
Crystal Bay
Stateline Pt
GAMBLING CASINOS
PROBABLY MOST CORRECT LOCATION
LAKE
TAHOE
120° HIGLEY 1860
120° HOUGHTON & IVES 1863 (STATUTORY BOUNDARY)
120° VON SCHMIDT 1872 (MARKED BOUNDARY)
120° GEODETIC LONGITUDE
120° GRUNSKY & MINTO 1889
120° U. S. COAST & GEODETIC SURVEY 1893
SCALE 1" = 2,000 Ft.
N
W
E
S

EXHIBIT "A"

OBLIQUE LINES AT ISSUE AT LAKE TAHOE


39° No. Lat.
e. US Coast & Geodetic Survey
d. Von-Schmidt
c. Houghton-Ives
b. 43° W. Long. from Washington
a. Major's Corner
LAKE TAHOE
Stateline
Bijou
N
Scale 1"=1 Mi.
Commercial and Residential Development


120° W. LONG.
42° N.
Lake Tahoe
39°
VON SCHMIDT BOUNDARY
1893-99 U.S. COAST & Geodetic Survey
River
35°
Colorado

Fire Island National Seashore Advisory Board

30 WEST WOODSIDE AVENUE
PATCHOGUE, N.Y. 11772

Davis Park Businessman's Association
Fire Island Contractors
Fire Island Pines Businessmen's Association
Fire Island Residents United
Fire Island Year Round Residents Association
Great South Beach Mobile Sportfishermen
Long Island Beach Buggy Association
Long Island Modulators
Patchogue Fishing Club
Pattersquash Gun Club
United Mobile Sportfishermen
4 x 4 Islanders of Suffolk County
North Shore Anglers
Great South Bay Anglers Club
Fire Island Smallbusinessmen's Association
Constitutional Rights Committee of Kismet

S 1705 and H.R. 3697

FIRE ISLAND NATIONAL SEASHORE AMENDMENTS ACT
OF 1983

After due deliberation of the above bills and their predecessors from 1982, this body has reached the following conclusions:

1. Roll-over fund:

These bills contain no details as to the origination of this fund, how it is to be dispersed, a criteria for it's disbursal, limits or controls for it's use, or limits for it's size. Obviously, it's purpose is to provide "quick" money for condemnations, and we sympathize with the National Park Service in it's frustration awaiting funds while a "blatant violator" continues to build and forces the eventual condemnation costs even higher. But, on the other hand, a fund such as this, uncontrolled (by the Congressional Apropriations Committees), limitless in amount, and without proper criteria for it's use, is first, a reversal of the current Park Service (General Accounting Office directed) policy of finding other available means of land protection, such as zoning, tax abatement, etc., and secondly, a return to a policy of federal acquisition as the only means of land control. This bill, if adopted in it's present form, will give the National Park Service both the incentive and the funds to acquire all lands within it's parks' boundaries, and, to enlarge those boundaries so as to acquire more and more land surrounding the parks. This virtually puts the National Park Service in the real estate business for profit. If a fund could be established which was limited in size, controlled by the National Park Service, but audited by another agency, such as the General Accounting Office, or a branch of the Apropriations Committee, we may be able to show some sympathy for this section of these bills in the future.

2. Injuctive Relief:

These bills would extend the power of the National Park Service to seek an injunction in the Federal Courts to stop zoning violators. The National Park Service has always had this power in the State Courts. Cases of this type are usually settled in a matter of months, or a year at the most. The Federal Courts have no such time limit precedent. Meanwhile, the property owner who intentionally, or unintentionally, created the zoning violation is deprived the use of this property, without just compensation, for any number of years. Conceivably the National Park Service could virtually own all, or part of the land within it's boundaries without paying out one red cent. The National Park Service has not asked for, nor does it require this kind of power. Past Administrators have stated point blank that grounds for condemnation can be found for every house on Fire Island.

3. Untimeliness:

Ten years ago there was little effort on the part of the Towns and Villages to revise their zoning codes or to attempt to have them approved by the Secretary of Interior. This approval, although necessary for the suspension of the Secretary's authority to condemn, was requested of the Towns and Villages, but not required of them in the enabling legislation for the Fire Island National Seashore Act of 1964. Ten years ago there were speculators who built in violation in order to force the National Park Service to condemn their property at greatly inflated prices. Many made large profits, a few are still in operation. But, the Towns and Villages have realized what has happened, and have cooperated closely with the National Park Service in revising their zoning codes to the National Park specifications. All of these codes are now awaiting the Secretary's approval which will automaticially remove the threat of condemnation from the majority of private properties. Also, on the General Accounting Offices' reommendation, certain sections of the Federal Zoning Standards for Fire Island are to be revised, as promised and documented, by the National Park Service. The section disallowing recognition of local variances or exceptions in particular, is to be revised. The use of variances was used locally as a land use control since it provided the Town Boards an opportunity to review almost all building permit applications prior to start of construction. But, as a result, hundreds, possibly more than a thousand, private homes were built with variances. Until the National Park Service fulfills it's promises to us, and it's commitment to the General Accounting Office to revise it's standards to interface properly with all of the local codes, bills such as S1705 and H.R. 3697 can remove the National Park Service's incentive to recognize the existing variances and can prevent the federal standards from ever being being revised, in order to suspend the Secretary's authority to condemn these properties.

The Fire Island National Seashore Advisory Board is an organization of 16 groups and associations on Fire Island and adjacent Long Island. These associations now number approximately 5,000 people, all with some interest in Fire Island. We respectfully submit this analysis to the Committee.

Sincerely,

Walter C. Reich - President

Fire Island Pines Property Owners' Association, Inc.
Fire Island Pines, New York 11782
•
516-597-6060

September 13, 1983

Mr. Walter Reich
30 West Woodside Avenue
Patchogue, New York 11778

Dear Walter:

The following resolution was passed at our Board of Directors meeting of September 11, 1983. The original resolution was adopted by our membership at our General Meeting October 2, 1982:

FIPPOA Resolution concerning Downey Bill of 1982 HR, 6771 has to be renewed showing new bill numbers. It should also be revised to clarify terms and to clean up wording such as:

Wording could mean General Management Plan which was adopted in 1978, but actually was meant to mean the current Land Protection Plan which still has not been adopted. Suggested changes shown below:

> "Whereas FIPPOA applauds the need for a vigorous enforcement of a Federal Land Protection Plan for the Fire Island Seashore and,
>
> "Whereas FIPPOA is aware that no Land Protection Plan has yet been adopted by the Secretary of the Interior, nor has the Secretary approved any of the local ordinances,
>
> "Now, therefore, be it resolved that FIPPOA urges that consideration by Congress of HR. 3697 and S. 1705 be deferred until a Federal Land Protection Plan has been adopted, and the local zoning ordinances of the various localities have been approved.

Very truly yours,

Ron McKenna

Ron McKenna
President

RMcK:hjs

Fire Island National Seashore Advisory Board

30 WEST WOODSIDE AVENUE
PATCHOGUE, N.Y. 11772

Davis Park Businessman's Association
Fire Island Contractors
Fire Island Pines Businessmen's Association
Fire Island Residents United
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United Mobile Sportfishermen
4 x 4 Islanders of Suffolk County
North Shore Anglers
Great South Bay Anglers Club
Fire Island Smallbusinessmen's Association
Constitutional Rights Committee of Kismet

October 3I, 1983

re: S.I705 Fire Island National Seashore Amendments Act of I983

Public Lands and Reserved Water Subcommittee

Committee for Energy and Natural Resources

Washington D.C. 205I0

Gentlemen:

On October 6, I983, your subcommittee held hearings on the above mentioned bill. Since these hearings were scheduled only 36 hours previously, this body did not have time enough to prepare comments.

Enclosed are a copy of each of the following for your consideration:

I. Comments on duplicate bills S. I705 and H.R. 3697.- 3 pages.

2. Resolution adopted unanimously by the Fire Island Pines Association.

3. Resolution adopted unanimously by the Brookhaven Town Board. - 3 pages.

4. Comments from the Supervisor of the Town of Islip. - 2 pages.

Thank you for the opportunity to comment at this time.

Sincerely,

Walter C. Reich

Walter C. Reich President FINSAB

MICHAEL A. LoGRANDE
Supervisor
GREGORY W. MUNSON
Deputy Supervisor

To: Walter Reich

TRICENTENNIAL ISLIP TOWN 1683 1983

TOWN OF ISLIP OFFICE OF THE SUPERVISOR TOWN HALL 655 MAIN STREET ISLIP, NEW YORK 11751 (516) 224-5500

September 9, 1983

The Honorable William Carney
House of Representatives
Washington, D.C. 20515

Dear Mr. Carney:

Thank you for the opportunity to comment on the proposed legislation to amend the Fire Island National Seashore Act, bill number H.R. 3697.

I am in complete agreement with the concept of the bill, that being the protection of Fire Island from inappropriate development. The Town of Islip has actively fought over-development of this fragile barrier beach through our zoning ordinance, variance procedures and by the creation of a Dune District.

This legislation will assist us in preventing development that would prove incompatible with this unique area, while at the same time permitting conforming development.

Specifically, the revolving fund concept introduced in the bill is an addition that will greatly assist in furthering its purposes. It is recommended, however, that a reasonable time frame be established and included in the final form of the bill in order to effectuate said revolving fund.

In order to strengthen the policies provided for in the bill, I urge the Secretary to adopt the Town of Islip Zoning Ordinance. One of my primary concerns is that local zoning control be retained and, as intended, intervention on the part of the Secretary shall occur only when necessary, as in the case of "gross violations". With the support of the Federal Government, we hope to better uphold our argument against overdevelopment. I recommend that you delay any action on the bill until the Town of Islip Zoning Ordinance has been adopted by the Secretary.

The tracts of land acquired over the years by the National Park Service are classified protected areas, i.e. protected from development. I am requesting assurance that these tracts, particularly those undeveloped strips sandwiched between communities, will not be sold in the future.

In addition, I believe it is necessary to hold public hearings locally to allow public feedback on the issues at hand.

In conclusion, it is my opinion that through continued coordination and mutual support, we can achieve our goal of protection of the ecology of Fire Island.

Very truly yours,

MICHAEL A. LO GRANDE
Supervisor

MAL:rm

cc: The Honorable Thomas J. Downey

Statement of the Fire Island Association
In Support of S.1705

Mr. Chairman, I am Norma Ervin, President of the Fire Island Association, an organization of 1500 members whose Board of Directors is composed of elected representatives from sixteen communities within the boundary of the National Seashore. I have been authorized by this Board of Directors to testify in support of S.1705 as introduced by Senators Moynihan and D'Amato.

This legislation was presented to your Public Lands Workshop on June 15, 1982 as an example of innovative approaches to protecting park resources. We were very pleased with the positive response it received.

The purpose of the legislation is to provide a viable enforcement mechanism in cases where the protection of park resources is based on reliance on local zoning.

In 1964, the Congress established the Fire Island National Seashore in order to preserve and protect one of the last relatively unspoiled natural barrier islands in the Northeast for the use and enjoyment of future generations. Unlike the great parks of the West, Fire Island was a mixture of privately owned lands, most of which were located in eighteen developed communities. The open space was both publicly and privately held. It was the intent of Congress to preserve both the natural landscape and the man-made environment of the communites. To carry out this objective, the Seashore Act exempts private property within the communities from condemnation, with certain exceptions, provided that the local authorities have zoning ordinances in effect. These ordinances must conform to standards promulgated by the Secretary and must meet with his approval. Any variance from local zoning standards automatically results in the loss of the exemption from condemnation. The objective was to keep private development within bounds appropriate for a National Park. Early standards contemplated low density of use to protect the natural environment and limitation of commercial uses to those serving the needs of the communities in order to preserve the man-made environment. Pressure for vacation rentals has led to the sometimes illegal conversion of single-family homes into multiple dwellings or rooming houses. Bars, disco and hotels have been established in violation of zoning standards.

Enforcement, to date, has by and large been a failure because local enforcement has been lax and condemnation and retention of private property has been the only enforcement tool of the Park Service. Use of scarce land acquisition funds for zoning enforcement has also enjoyed a low priority within the Park Service. In addition, the protective safeguards that the Congress has built into the land acquisition process, in order to protect interests of private property owners, have a built-in time delay. Ironically, this protective delay mechanism serves as an inducement rather than a deterrent to those who would violate zoning.

S.1705 is designed to remedy this situation. It makes three changes. It replaces condemnation and retention of property with condemnation and mandatory resale. The Secretary must resell acquired property with a convenant for conforming use and he is authorized to retain the sale proceeds for future enforcement action. It also authorizes the Secretary to apply to the U. S. District Court for an injunction against the nonconforming use pending condemnation. This authority not only puts the element of deterrence back into the enforcement process, it also reduces the costs of acquisition and prevents irreparable damage. This procedure either results in the payment of fair market value for the acquired property or permits the owner to elect to use his property in conformity with zoning standards.

Finally, the bill recognizes that every variance is not in and of itself a cause for condemnation. It is the intent of this bill to single out only variances or exceptions which, if executed, would result in usage inconsistent with the purposes of the Seashore or cause damage to park resources.

The legislation is starkly simple in its language, but in our judgement, addresses the need for a viable enforcement mechanism. We recognize that there may be a need to clarify intent with carefully crafted report language, but we hope that the concepts of this approach will remain intact.

The authorities in this bill are not new. In fact, I understand that revolving funds now are used by the Park Service to maintain property on which it receives rental payments. But, the combination of these authorities does provide an element of innovation. We respectfully urge the adoption of this bill.

UE POINT BEACH PROPERTY OWNERS ASSOCIATION

October 13, 1983

Public Lands and Reserve Water Committee
United States Senate
Washington, D.C. 20510

Dear Committee Members:

RE: S 1705 Fire Island Bill

Please be advised that this Association is opposed to S 1705 and urges you to join the opposition. Hearings were held in Washington on Thursday, October 6. Our reasons for opposition are as follow:

1. Thirty six hours was not enough public notice to act upon this bill.
2. This bill was mixed in with non controversial bills in an effort to herd it through.
3. There were NO PUBLIC HEARINGS and this totally affects every home on Fire Island. Our association IS on Fire Island.
4. The bill does not have the support of either Islip Town or Brookhaven Town Boards, both boards have sert resolutions against it. Passage will offend "Home Rule."
5. Federal standards and zoning codes for Fire Island have not been revised and zoning standards have not been approved so this bill is not necessary at this time.
6. We are concerned about the 2 major precedents which Senator Wallop mentioned at the hearing on October 6. A) The Rollover Fund - which would cut Congressional Control of money for land acquisition and would allow private money to literally condemn land without congressional oversight.
   B) The Injunctive Authority - which has no time limit in S 1705 means the National Park Service could take away the use of property without compensation for the taking.

In summary, this is a bad piece of legislation and we urge you to use your influence to see it does not pass.

Very truly yours

BLUE POINT BEACH PROPERTY OWNERS ASSOCIATION

Claire Siegel

(Mrs.) Claire Siegel, Secretary
204 Rider Avenue
Patchogue, New York 11772

Dear Sir:

We call your attention to HR3697 and S1705, identical bills affecting the Fire Island National Seashore. I oppose these bills.

The United States General Accounting Office, in its report of May 8, 1981, (CED-81-78), said that:

> "The NPS zoning standards at Fire Island National Seashore are too restrictive, and permit land to be acquired that is not needed to achieve the purposes of the Fire Island National Seashore Act. The NPS should revise its zoning standards, establish criteria for acquiring properties, and sell back to private citizens land it acquired but does not need."

These bills are designed to enforce the very standards that USGAO criticized, and start a new round of condemnation on Fire Island. Further, the bills are of national significance. One section would start a rolling fund for acquisition on Fire Island with language which specifically would remove Congressional Appropriations Committees' authority to appropriate monies annually, thereby putting NPS in the business of buying and selling land on Fire Island without Congress or anyone else saying yea or nay.

On a day to day basis, Congressional and citizen oversight and control of NPS acquisition practices is reliant upon Congress' power of the purse. Surely the proposal must concern and arouse the opposition of every citizen and lawmaker who wishes to preserve our system of checks and balances.

If the bills pass, we believe these principles will resonate quickly throughout the Park system, and probably into other departments as well, particularly the section which would remove Congress' purse strings from Agency action.

Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:

Dorothy E. Camhein

MAILING ADDRESS

Box 306
Sayville, N.Y. 11782

FIRE ISLAND ADDRESS

169 Cedar Wk.
Fire Is Pines, N.Y. 11782

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From the Fire Island home of:

MAILING ADDRESS

300 E 71 ST NYC 10021
43 Lone Hill F I P

FIRE ISLAND ADDRESS

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Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:
DANIEL & ZOEY WILSON

MAILING ADDRESS
502 LAGUARDIA
NY, NY 10012

FIRE ISLAND ADDRESS
WATER ISLAND

Dear Sir:

We call your attention to HR3697 and S1705, identical bills affecting the Fire Island National Seashore. I oppose these bills.

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Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:
R. B. Rumely

MAILING ADDRESS
65 E. Second St.
New York, NY 10003

FIRE ISLAND ADDRESS
477 Ocean Walk
Fire Island Pines

Dear Sir:

We call your attention to HR3697 and S1705, identical bills affecting the Fire Island National Seashore. I oppose these bills.

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Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:

John D Murphy

MAILING ADDRESS

301 E 61st St
NYC 10021
NY

FIRE ISLAND ADDRESS

FIP Co-Op 145

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Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:
Robert [illegible]

MAILING ADDRESS
61 Pierrepont St
Brooklyn, NY 11201

FIRE ISLAND ADDRESS
#216 Beach Hill
Fire Island Pines, N.Y.

Dear Sir:

We call your attention to HR3697 and S1705, identical bills affecting the Fire Island National Seashore. I oppose these bills.

The United States General Accounting Office, in its report of May 8, 1981, (CED-81-78), said that:

> "The NPS zoning standards at Fire Island National Seashore are too restrictive, and permit land to be acquired that is not needed to achieve the purposes of the Fire Island National Seashore Act. The NPS should revise its zoning standards, establish criteria for acquiring properties, and sell back to private citizens land it acquired but does not need."

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On a day to day basis, Congressional and citizen oversight and control of NPS acquisition practices is reliant upon Congress' power of the purse. Surely the proposal must concern and arouse the opposition of every citizen and lawmaker who wishes to preserve our system of checks and balances.

If the bills pass, we believe these principles will resonate quickly throughout the Park system, and probably into other departments as well, particularly the section which would remove Congress' purse strings from Agency action.

Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:
Bessie J. [illegible]

MAILING ADDRESS
852 Jerome Ave
Hillside, N.J.
07205.

FIRE ISLAND ADDRESS
377 Nautilus Walk
Fire Island Pines,
L.I.

Dear Sir:

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From the Fire Island home of:

MAILING ADDRESS

25 W. 81 NYC 10024

FIRE ISLAND ADDRESS

608 Shore, F.I. Pines

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Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:

MAILING ADDRESS

201 E. 28 St
N.Y.C. N.Y.
10016

FIRE ISLAND ADDRESS

Ralph [illegible]

#33 F.I. Pines

Dear Sir:

We call your attention to HR3697 and S1705, identical bills affecting the Fire Island National Seashore. I oppose these bills.

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From the Fire Island home of:

MAILING ADDRESS	FIRE ISLAND ADDRESS
299 F.I. Bl[illegible]	Sara [illegible]

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J GARVIN MECKING

From the Fire Island home of:

FIRE ISLAND ADDRESS
Lot 64 FIP.

MAILING ADDRESS
211 W 11 St
NY NY 10014

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From the Fire Island home of:

MAILING ADDRESS
145 E 16 St
NYC 10003

FIRE ISLAND ADDRESS
62 Bay Walk
Fire Island Pines NY

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Therefore, we ask you to join Fire Islanders in opposing this legislation.

From the Fire Island home of:
Roger W. Iwanski

MAILING ADDRESS
Roger W. Iwanski
126 Chapel Ave
E. Patchogue, N.Y
11772

FIRE ISLAND ADDRESS
East Walk
Davis Park,
Fire Island, N.Y.
11772

Dear Sir:

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From the Fire Island home of:

MAILING ADDRESS

Ron Lee
29 Dawn Dr
Shirley, N.Y. 11967

~~FIRE ISLAND ADDRESS~~

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From the Fire Island home of:

MAILING ADDRESS ~~FIRE ISLAND ADDRESS~~

Carol S Dammann
3 Auburn Ave
Shirley, N.Y. 11967

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From the Fire Island home of:
Jayne S. Reed

MAILING ADDRESS
30 W. Woodside Ave.
Patchogue, N.Y. 11772

FIRE ISLAND ADDRESS
301 F.I. Blvd.
Fire Island Pines

Dear Sir:

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From the Fire Island home of:

MAILING ADDRESS

Barbara Sellajo
94 Highland Ave
Patchogue, NY 11772

FIRE ISLAND ADDRESS

Dorella Walk
Davis Park, NY

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From the Fire Island home of:

MAILING ADDRESS	FIRE ISLAND ADDRESS
SHEILA [illegible]	SHEILA [illegible]
31 DOGWOOD LANE	DAVIS PARK, [illegible], N Y 11772
PATCHOGUE, N Y 11772	

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MARIAN SPENCER

From the Fire Island home of:
Marian Spencer

MAILING ADDRESS
19 Southgate Ave.
Hastings-on-Hudson,
N.Y. 10706

FIRE ISLAND ADDRESS
East Walk
Davis Park
F. I., L.I., NY.

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From the Fire Island home of:

MAILING ADDRESS

FIRE ISLAND ADDRESS

LeeAnne S. Nagel Manorville
9-7 Wood Circle. NY. 11949

Town of Brookhaven
Patchogue, Long Island, N.Y.

HENRIETTA ACAMPORA, SUPERVISOR

Town Hall · 205 South Ocean Avenue
Patchogue, L.I., New York 11772
516-654-7808

October 26, 1983

US Senate Sub-Committee on
Public Lands and
US Senate Committe on
Energy & Natural Resources
Washington, DC 20510

Attention: Anthony Bevinetto

Re: Senate Bill No. 1705

Dear Mr. Bevinetto:

As we discussed on October 5, 1983, please be advised that the Town of Brookhaven is in opposition to the above-captioned legislation.

I have attached a copy of a resolutions adopted by the Brookhaven Town Board at their meetings held on November 1, 1982 and September 20, 1983, respectively, for your information.

If you should have any questions, please do not hesitate to contact this office.

Very truly yours,

Eric J. Russo
Deputy Supervisor

EJR:em
Encs.

RESOLUTION SUBMISSION

WORK SESSION NO. ____________ TOWN BOARD MEETING NO. 13

MOVED BY COUNCILMAN ____________ MEETING OF September 20, 1983

SECONDED BY ____________ Revision ____________

SHORT TITLE: HOME RULE MESSAGE - OPPOSITION TO HR-3697 - FIRE ISLAND NATIONAL SEASHORE

DEPARTMENT: SUPERVISOR (via Acampora)

REASON: Encroachment upon home rule powers of Town.

DOLLARS INVOLVED (+ or -): none

Execution of document required: no

MJK:mjb

PRESENT	ABSENT		AYE	NO	NOT VOTING
		~~COUNCILMAN BURKE~~			
		COUNCILMAN MACCHIA	S		
		COUNCILMAN DOOLEY	①		
		~~COUNCILMAN GERRARO~~			
		COUNCILMAN LOSQUADRO			
		COUNCILMAN ZIMMER			
		SUPERVISOR ACAMPORA			

RESOLUTION NO. 13 OF SEPTEMBER 20, 1983
HOME RULE MESSAGE - OPPOSITION TO BILL
NO. HR-3697 - FIRE ISLAND NATIONAL
SEASHORE

WHEREAS, it has come to the attention of the Town Board of the Town of Brookhaven, Suffolk County, New York, that Bill No. 3697 has been introduced in the House of Representatives of the United States Congress; and

WHEREAS, the purpose of said legislation would be to modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes; and

WHEREAS, the Town Board views such legislation as being overly broad, vague and indiscriminate and not in the best interests of all Fire Island residents and homeowners in Brookhaven Town; and

WHEREAS, to support such legislation in its present form might permit the Federal Government to take abusive action as it has taken in the past with respect to Fire Island National Seashore in the Town of Brookhaven; and

WHEREAS, it is the opinion of the Town Board of the Town of Brookhaven that Bill No. HR-3697 encroaches upon the home rule power of the Town of Brookhaven to govern in zoning matters; and

WHEREAS, the new Great South Beach zoning ordinance recently adopted by the Town Board is still awaiting approval by the United States Department of the Interior,

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Brookhaven, by adoption of this resolution, that it is hereby opposed to Bill No. HR-3697 in its present state, as being an encroachment upon the home rule power of the Town of Brookhaven and as not being in the best interests of the residents of Fire Island and the Town of Brookhaven, and be it further

RESOLVED that the Town Clerk of the Town of Brookhaven is hereby authorized and directed to forward copies of this resolution to the following persons:

The President
The White House
1600 Pennsylvania Avenue

Hon. Alfonse D'Amato
United States Senate
733 Park Avenue
New York, New York 10017

Hon. Daniel P. Moynihan
United States Senate
733 Park Avenue
New York, New York 10017

Hon. Thomas J. Downey
U. S. House of Representatives
Four Udall Road
West Islip, New York 11795

Hon. William Carney
U. S. House of Representatives
2400 North Ocean Avenue
Farmingville, New York 11738

Hon. Thomas P. O'Neill
U. S. House of Representatives
United States Congress
Washington, D. C.

The second reason for building Clinch River has to do with time scale. I often have felt that we went too fast in our conventional light water reactor deployment, that much of nuclear energy's travail would have been avoided had we moved more deliberately. We forget that a 1,000-megawatt electric power plant, if it is to be fully economical, is expected to last as long as thirty years; but if we build reactors too quickly we have no way of knowing whether the system will last anywhere near thirty years, nor can we incorporate lessons learned in earlier reactors into later ones without expensive backfits. This is now happening with many light water reactors—steam generators and pipe cracking may limit their lifetime seriously, even though we have learned ways of dealing with these problems.

Can we not learn from this experience? If we have fifty years before breeders are needed on a large scale, we do not have all that much time to wait. If Clinch River is built by 1990, it will be 2020 before we know whether the device has lasted thirty years—or whether serious deficiencies, that appear after extended operation, will limit its lifetime.

We are unaccustomed to think about technologies that are as slow moving and ponderous as are large nuclear power plants. In this age of computers and jet travel, time is foreshortened, and we forget that only with the passage of thirty years will we *know* that a big device will last for thirty years. We do not have time to waste. We ought therefore to get on with Clinch River. The great French Marshal Lyautey once said to his gardener: "Plant a seedling tomorrow." And that gardener said, "It won't bear fruit for a hundred years." "In that case," Lyautey said to the gardener, "plant it this afternoon." Clinch River is such a seedling.

Dr Weinberg thus makes the important point that we do not have time to waste and we must, therefore, get on with Clinch River. I urge my colleagues to consider the wisdom of his analysis and to strongly support his conclusions.●

TUITION CREDIT ISSUE

HON. AUGUSTUS F. HAWKINS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 28, 1983

● Mr. HAWKINS. Mr. Speaker, the recent Supreme Court decision allowing tax deductions for certain school expenses to parents of Minnesota schoolchildren, at first reading seems to promise more than it actually does. Initially there was talk that the Court decision was supportive of the administration's tuition tax credit scheme. This is far from the case: The tax benefits in this case could be received by parents of students who attend either private school or public school. And the Minnesota tax benefit is a deduction. The administration's bill provides tax credits—not tax deductions, for private schools—not public schools.

Even with the Supreme Court decision, which somewhat broadens an understanding of who may participate in a school tax benefit plan, there are very serious problems concerning any tuition tax credit plan. For example: What would be the nature of the tuition tax credit revenue loss? Is the tuition tax credit scheme a "budget busting" initiative? Would the middle-and upper-class benefits be unfair in comparison to other economic groups? Of what benefit would tuition tax credits be to poor people?

A more extended discussion of this most important issue appeared in a recent edition of the Los Angeles Times. I urge my colleagues to read the article which I have submitted for their information:

[From the Los Angeles Times, July 13, 1983]

TAX CREDITS FOR TUITION ADDRESS THE WRONG ISSUE

(By Edwin Dorn and Mary Frances Berry)

The U.S. Supreme Court's recent 5-4 decision upholding a Minnesota law allowing tax deductions for certain education expenses including private-school tuition represents a narrow victory for someone, but it is hard to say for whom. It would seem to be a victory for proponents of tuition tax credits, except for two points: The court's majority made clear that it supported the Minnesota law because the tax benefits are available to parents of students who are enrolled in private and public schools. And the operative mechanism in the Reagan Administration's proposal is credits—not deductions—for private-school tuition.

Thus, in order to survive this court's scrutiny, it appears that the Reagan plan would have to be revised to allow parents of all schoolchildren to obtain tax benefits for educationally related expenses. When one adds up all the potential deductions (or credits) for all the nation's 50 million students—gym clothes, materials for home work projects, transportation, field trips, textbooks and tuition—losses to the U.S. Treasury could become astronomical.

Indeed, the court may have opened a door through which Congress could authorize billions of dollars worth of tax expenditures for education, thereby canceling out the federal government's recent cutbacks. Even as indirect support, this could be very helpful to the nation's educational needs, and it would raise another set of problems. Tax expenditures generally are regarded as inefficient public-policy mechanisms, because their benefits are difficult to target. They also tend to be inequitable, because low-income people who pay little or no taxes can claim few if any deductions.

Whatever the ultimate implications of the high court's decision, its immediate effect is to eliminate some of the constitutional arguments from the debate over tax credits. This should cause the Adminstration, its supporters and its critics to focus on the educational merits of the private-school tuition issue.

On key question that proponents of schemes to assist private schools must now address is this: What will additional support for private schools, which enroll only 10 percent of the nation's schoolchildren, do to improve the quality of American education? The National Commission on Excellence in Education reported recently that our nation's future is "at risk" because our education system has been turning out underachieving students trained in the wrong subjects. Ninety percent of the nation's students are enrolled in public schools, and it is in those schools that the problems are most pronounced. Clearly tuition tax credits do not address those problems.

Tax credits may enable more public-school students to enroll in private schools. However, that is not likely to happen quickly, because few quality private schools have vacancies; some have years-long waiting lists. Where room does become available in the better private schools, it will attract the most talented public-schools, it will attract the most talented public-school students and their committed parents thereby adding grease to the slippery slope of decay that many public schools have been sliding down. Even some low-income parents who have moved their children from public to private schools do not want to see measures taken that would erode further the quality of public education.

The ability to be selective is one major advantage that private schools have over public schools. Selectivity is the reason why comparisons between public and private schools often are misleading, and also why talk about fostering competition between public and private schools borders on sophistry.

The better private schools are selective on the grounds of merit. But many others are selective on the grounds of race and other prohibited criteria. Thus a second question that supporters of tax credits must answer is: How will civil-rights enforcement efforts be stepped up to ensure against discrimination? That question would become especially important if federal funds were to start flowing, however indirectly, into the coffers of "segregation academies." One wonders whether the proponents of tuition tax credits have thought carefully about the implications of closer government scrutiny.

Discrimination has as much to do with the quality of education as school finance does. The Commission on Excellence in Education found cause for alarm not only in the failure of schools to teach relevant skills but also in their failure to convey the "intellectual, moral and spiritual strengths . . . which knit together the very fabric of society." Our young people will not learn the value of our richly diverse society if they attend schools that are segregated by race, class or religion.

America's historic commitment to public schools has stood for more than a minimal guarantee of training for work; it has been a great cohesive force in the life of the nation. In principle, if not always in fact, our system of public education has been a proving ground for our democratic ideals. The public base of our schools should be a source of pride, not begrudgement.

The Supreme Court's decision may provide mild encouragement to the supporters of tuition tax credits. At the same time, it presents a constructive challenge to those of us who sincerely want to arrest the "unilateral educational disarmament" that the commission described. We must now think very hard about ways by which the nation can provide quality education to all its young people. In a united re-dedication to strengthening public education, the people of this country could find a new sense of purpose and cohesion.●

FIRE ISLAND NATIONAL SEASHORE

HON. THOMAS J. DOWNEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 28, 1983

● Mr. DOWNEY of New York. Mr. Speaker, today I introduced legislation to amend the Fire Island National Seashore Act. The Fire Island National Seashore was established in 1964 to preserve and protect one of the last relatively unspoiled natural barrier islands in the Northeast for the use and enjoyment of future generations.

Fire Island is a unique resource. It is located only 50 miles from New York City and has one of the finest ocean beaches in the world. It also has magnificent dunes and spectacular maritime forests including the famous Sunken Forest preserve. Although there are bridges at either end of Fire Island, there are no roads to mar the beauties of the island. Access to most of the seashore is by ferry or footpath. Within the boundaries of the seashore are 18 scattered small, heavily developed communities, primarily consisting of single-family homes and cottages and the businesses serving them and day visitors. There are about 4,500 such structures today compared with fewer than 3,000 when the seashore was established. Future growth is estimated at about 1,000 additional structures.

The act exempts private property within these communities from condemnation, with some exceptions, provided that the local authorities have in effect zoning ordinances which conform to standards promulgated by the Secretary and which are approved by him. No current local zoning ordinances have been approved by the Secretary, although three of the four zoning authorities have made the necessary amendments and the fourth one is expected to follow shortly. No new commercial use or expansion of existing ordinances is permitted without the approval of the Secretary of Interior. Property subject to a variance or nonconforming use loses this exemption. Since the subdivision in many communities originally was intended for modest cottages, under present zoning laws many plots are buildable only under a variance. More than one-third of the structures built since 1964 received a legal variance under New York law.

Public Law 95-625 created an oceanfront development on the protective dune system. Owners of undeveloped property within the dune district are permitted to retain title provided the dune is kept in its natural state.

The first zoning standards were promulgated by the Secretary in 1967; the latest revision was in September 1980. The standards contemplated low density of use to protect the environment, mostly single-family homes, and limitation of commercial uses to those serving the needs of the communities. The idea was to keep private development within bounds appropriate for a national park. Unfortunately this scheme has not been entirely successful. The high demands for vacation rentals on this most desirable island has led to the sometimes illegal conversion of single-family homes into multiple dwellings or roominghouses. Bars, discos, and hotels have been established in violation of zoning standards.

Enforcement of standards, by and large, has been a failure because Congress authorized condemnation as the only enforcement tool. The Secretary has no authority to obtain an injunction in Federal court. We twice have raised the authorized ceiling for land acquisitions, but annual appropriations have not been adequate. Furthermore, in these times of fiscal constraints, the National Park Service puts a low priority on using scarce land acquisition funds for enforcement. A Federal court has criticized this scheme as follows:

> In their justifiable frustration plaintiffs have sought relief from the courts but it is clear that only Congress can provide the remedy . . . nevertheless, precatory though our words must necessarily be, we cannot help but urge those with the power and authority to preserve this gem of an island to halt their procrastination and get on with the urgent business of saving this charming and fragile outpost of nature before the encroachment of haphazard development irrevocably despoil it. (Biderman v. Morton, 497 F.2d at page 1148–49).

This bill offers a way out of the dilemma. It is one which will cost the taxpayer little or nothing. It is one which avoids retiring from private use expensive property with little or no public value. It also is more flexible and respectful of private property owners.

It is important to emphasize that the broad powers the Secretary now has and the additional powers this bill would grant are intended to be used only in instances when the municipalities are unable or unwilling to enforce the zoning standards. The principle of home rule in this area is primary. The Secretary's powers are a court of last resort.

It is intended that the Secretary shall use the powers given to him only in cases of gross violations which degrade the character of the communities or which threaten the natural resources which the seashore was established to protect. The seashore now has a land-acquisition plan that takes into account these fine distinctions. Congress cannot take on the burden of enforcing the Secretary's zoning regulations or making judgments on individual instances. But we can provide a better and more cost-efficient mechanism than now exists.

This bill does two things: It allows the Secretary to sell acquired property with a covenant for a conforming use and to retain the proceeds for future enforcement action. It also gives the Secretary the option of applying to the U.S. district court for an injunction against the nonconforming use pending the condemnation. These are not new powers. What is new is the way in which they are being applied.

The turn around provision, acquiring a nonconforming property and selling it for a conforming use, has been in the Lands and Waters Conservation Act. It has not been used in the seashore because the proceeds from such sales do not go back in the seashore but into the general fund. This bill would establish a revolving fund to put proceeds of the sales right back into the seashore only for the purposes of implementing the act.

One reason the deterrent has not been effective is that the safeguards Congress has built into land-acquisition procedures to protect the interests of private property owners have a built-in time delay. Where development pressures are as great as they are at Fire Island, these put the property owner who is determined to violate the standards in a no-risk situation, which guarantees a loss to the taxpayers.

Testimony before the House Appropriations Subcommittee on Interior and Related Agencies, March 17, 1980, documented a number of recent instances in which building in violation of standards was carried on even after the Secretary had initiated use of his condemnation powers. Before the required proceedings had been completed, the Government was faced with paying fair market value for a developed tract instead of for vacant land. The National Park Service then either backed away from the whole situation or expended hundreds of thousands of dollars needlessly.

The provision to permit the Secretary to apply for an injunction will give him the ability to act swiftly to prevent such exploitation. It does not confiscate property rights because at the end of this procedure one of two things happens: either the property owner is paid fair market value for his property, or he decides to use it in conformity with the zoning standards. If the property is acquired, this bill provides for the turnaround and the ability to use appropriate funds similarly for future potential violations.

This is not exactly a "free lunch" proposal. There will be some costs. But it does protect both the public interest in preserving the island and the public treasury. It also is more equitable for private property owners than what we now have and will allay the concerns some Fire Islanders have expressed in the past about the seashore's acquisition and condemnation policies.

Since this proposal was introduced in the last session of the 97th Congress, the Park Service has issued a land protection plan for the seashore. That plan attempts to offer cooperation and good faith as principle vehicles for resolving land-use issues. We applaud that attitude and sincerely hope that it will be met with a positive response locally. However, intervening development actions that contravene local zoning standards indicate a need for a viable enforcement mechanism. This legislation will prove such a tool and will insure that the will of Congress—to permit compatible development within the national seashore—will be upheld.

H.R. —

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fire Island National Seashore Amendments Act of 1983".

Sec. 2. Section 2 of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e-1), is amended by adding at the end the following new subsections:

"(h)(1)(A) The Secretary shall sell any property described in subparagraph (B) of this paragraph acquired by condemnation under this Act—

"(i) to the highest bidder;

"(ii) at not less than the fair market value; and

"(iii) subject to covenants or other restrictions that will ensure that the use of such property conforms to the standards specified in regulations issued under section 3(a) of this Act which are in effect at the time of such sale and to any approved zoning ordinance or amendment thereof to which such property is subject.

"(B) The property referred to in subparagraph (A) of this paragraph is any property within the boundaries of the national seashore as delineated on the map mentioned in section 1 except—

"(i) property within the Dune district referred to in subsection (g) of this section;

"(ii) beach or waters and adjoining land within the exempt communities referred to in the first sentence of subsection (e) of this section, and

"(iii) property within the eight-mile area described in the second sentence of subsection (e) of this section; and

"(iv) any property acquired prior to October 1, 1982, that the Secretary determines should be retained to further the purposes of this Act.

"(2) Notwithstanding any other provision of law, all moneys received from sales under paragraph (1) of this section may be retained and shall be available to the Secretary, without further appropriation, only for purposes of acquiring property under this Act.

"(i)(1) Upon or after the commencement of any action for condemnation with respect to any property under this Act, the Secretary, through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prevent any use of, or construction upon, such property that—

"(A) fails, or would result in a failure of such property, to conform to the standards specified in regulations issued under section 3(a) of this Act in effect at the time such use or construction began; or

"(B) in the case of undeveloped tracts in the Dune district referred to in subsection (g) of this section, would result in such undeveloped property not being maintained in its natural state.

"(2) Any temporary restraining order or injunction issued pursuant to such an application shall terminate on the date the United States acquires title to such property or, if such proceedings are terminated without the United States acquiring title to such property, on the date of such termination.".

Sec. 3. Section 3(e) of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e-2(e)), is amended to read as follows:

"(e) If any property, including improved property but excluding undeveloped property in the Dune district referred to in section 2(g) of this Act, with respect to which the Secretary's authority to acquire by condemnation has been suspended under this Act—

"(1) is, after the date of the enactment of the Fire Island National Seashore Amendments Act of 1982, made the subject of a variance under, or becomes for any reason an exception to, any applicable zoning ordinance approved under this section; and

"(2) such variance or exception results, or will result, in such property being used in a manner that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time such variance or exception took effect;

then the suspension of the Secretary's authority to acquire such property by condemnation shall automatically cease.". ●

THE FAIR CAMPAIGN ACT OF 1983

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 28, 1983

● Mr. LANTOS. Mr. Speaker, the time has come to take political power out of the hands of special interest groups and return it to the people. Political action committees organized by business and other groups with special interests and narrow concerns, exercise influence that frequently contradicts the general interests of the majority of the people of this Nation.

The tremendous power of these special interests is wielded through their substantial contributions to political campaigns. In the 1982 elections, PAC's contributed almost 24 percent, $82 million, of the $344 million spent in all races for Senate and House seats. The proportion of funds contributed by PAC's was even higher when amounts spent by candidates who lost in the primary elections are excluded—over 27 percent of the $290 million spent.

Nearly all of us who have been elected Members of the House of Representatives and the Senate have received money from these organizations. As long as we are subject to existing election finance laws, there is little that we as individual public officials can do to limit the influence of special interests upon the political process, no matter how much we may wish to do so. Acting together, however, we can limit their influence by changing the rules, and amending the laws that govern campaign contributions.

Mr. Speaker, to deal with these problems, I recently introduced H.R. 3610—the Fair Campaign Act of 1983. This legislation makes two major changes in campaign financing in order to reduce special interest influence in the political process.

First, it imposes a ceiling on contributions from PAC's. For campaigns for seats in the House of Representatives, the limit which could be contributed by all such committees would be $75,000 for a general or special election. An additional $25,000 maximum would be permitted in the case of a runoff election. In election campaigns for Members of the U.S. Senate, the limit for contributions from multicandidate political committees would be the greater amount of either $75,000 or the product of $37,500 times the number of U.S. Representatives elected from that State up to a maximum amount of $500,000. For runoff elections, an additional amount of either $37,500 or the product of $12,500 times the number of U.S. Representatives elected from that State would be permitted.

A second set of changes which H.R. 3610 makes would encourage individual participation in funding political campigans. The bill will increase the tax credit allowed to individuals for campaign contributions made to candidates for public office. Under current law a tax credit of $50 per individual and $100 per couple filing a joint return is allowed for political contributions. H.R. 3610 will double that amount to permit a tax credit of $100 per individual and $200 for a joint return.

Another provision of the bill to encourage individual—as opposed to group—contributions will increase the ceiling for individual contributions for political campaigns for seats in the House of Representatives from $1,000 to $2,500 per campaign.

Mr. Speaker, the purpose of the Fair Campaign Act of 1983 is to return the elections to the people—to reduce the influence of special interests, and to encourage individual participation in the electoral process.

Let us set aside partisan considerations. Let us act to return political campaigns to the people and limit the influence of special interests. I invite my colleagues in the House to join with me in cosponsoring and supporting this important legislation. ●

SAN JOSE MERCURY ON U.S. COVERT ACTIVITIES IN NICARAGUA

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 28, 1983

● Mr. MINETA. Mr. Speaker, I have repeatedly voiced my opposition to the administration's overt covert war in Nicaragua. In the House Select Committee on Intelligence, on the floor of this House, and in the news media, I have tried to point out the folly of using U.S. resources for the aggressive purpose of sponsoring a civil war.

Today, my colleague DON EDWARDS and I are pleased to acknowledge the outstanding editorial stance which our hometown paper, the San Jose Mercury, has consistently taken on this crucial issue. For my colleagues and their staff, we now submit into the

Questions and Answers About the Proposed Amendment to the Fire Island National Seashore Act.

Q. What is the purpose of this Amendment?

A. Very simply, to provide a more straightforward and practical zoning enforcement mechanism than the one which exists in the current law.

Q. What changes are proposed?

A. The amendment has four basic features:

1. From now on the Secretary would have to resell, with deed restrictions, any property he condemned because it was being used in a manner that would either violate local zoning or harm the Seashore.
2. When a condemned piece of property is resold, the proceeds would go into a special fund which the Secretary could use only to purchase other properties that were being developed in a manner inconsistent with the Seashore Act.
3. In the future the National Park Service would not have to notify landowners that their property was subject to condemnation simply because they were granted a variance from local zoning. Notification would only be given in those cases in which the variance also violated the Secretary's Regulations that are called for in the Seashore Act.
4. The Secretary is specifically authorized to seek a temporary restraining order in order to halt illegal development (in violation of local zoning or detrimental to the Seashore) while he is in the process of condemning the property.

Q. Why does the amendment require the Secretary to resell, under certain conditions, the property he condemns because of improper development.

A. The purpose of this type of condemnation is to assure the protection of the Seashore and not to prevent development per se. Congress recognized that development could occur without harming the Seashore provided that it was in conformance with local zoning which would be enacted pursuant to the Secretary's Guidelines which would be designed to protect the Park's resources.

Q. Does this provision to resell expand the power of the Secretary?

A. No. The Secretary already has the general authority to resell property with or without restrictions, but he is not presently required to do so in cases such as this. Up to this point, he has never voluntarily exercised this authority.

Q. What would happen to the proceeds of the resale under current law?

A. The money would go into the General Fund and become available for appropriation by the Congress to any other Federal program account (Defense, Welfare, etc.).

Q. Wouldn't the establishment of a special fund mean that the Secretary would no longer be subject to the control of Congress since he would not have to ask for money to condemn property?

A. No. The Secretary would continue to have to get Congressional approval in order to condemn any piece of property. The authorizing committees of Congress grant approval to condemn and the Secretary would still have to have their permission to take such an action. The only difference is that the added step of getting either approval to reprogram existing funds or a new appropriation from the Appropriations Committees would be eliminated. Furthermore, the Secretary is always accountable to the Appropriations Committees for the expenditure of appropriated funds regardless of whether or not they are in a special account. In this case, the Secretary is generating funds from the sale of publicly owned property which is subject to Congressional oversight.

Q. How does the amendment change the authority of the Secretary with respect to variances?

A. At present, the Secretary's power to condemn private property is reinstated whenever a variance to local zoning is granted. The National Park Service has no discretion with respect to notifying an owner that he/she is subject to condemnation when a variance is granted. This amendment says that the Secretary's powers to condemn can only be reinstated in cases of violations of local zoning and/or in the case of a variance or exception to local zoning which violates the Secretary's Guidelines. In short, the variance must be one that will result either directly or cumulatively in an adverse impact on the National Seashore.

Q. Why does the amendment specifically authorize the Secretary to seek a temporary restraining order while initiating a condemnation action against a property owner who is violating zoning or harming the Seashore?

A. Although the lawyers at the Department of Interior say that the Secretary already has this authority, it has been restated in the amendment. The reason for doing this is to make it absolutely clear that the Congress wants the Secretary to act promptly in cases of illegal development. An injunction, if granted by the Courts, would prevent harmful development from occuring while the condemnation action is proceeding and it would save tax dollars. The property owner is compensated for his/her land and improvements. An injunction would stop the building and further expenditures by the landowner thereby reducing the amount of dollars that would have to be paid in order to condemn the property.

Q. How many properties would the Secretary have to sell?

A. Although the National Park Service will have to complete its review before a precise answer can be given, it is estimated that there are 3 - 4 properties that could be resold by the Secretary. The revenue from these sales could serve as the basic fund for future enforcement actions, if needed.

Q. Does the amendment prescribe any Federal zoning requirements or change the responsibilities for zoning as spelled out in the original Seashore bill?

A. No! The amendment provides only a mechanism for enforcing both the local zoning actions and the Secretary's Guidelines. Both the zoning laws and the Secretary's Guidelines can be changed to reflect current needs as is provided for in the original act.

Q. Why is the National Park Service involved in zoning issues at all?

A. When Congress first established the Seashore, it gave the Secretary the power to condemn certain lands within the Seashore boundary for Park purposes. It exempted other property from condemnation provided that the Secretary developed a set of regulations to insure protection of the Seashore and the local zoning authorities enacted zoning ordinances that were in keeping with the Secretary's Guidelines. The National Park Service was given the responsibility of enforcing the local zoning which covered property within the Seahsore.

Q. What will be the anticipated effects of this legisation?

A. It is hoped that the following objectives will be met:

1. Property owners will have a clearer understanding of what they can and cannot do with their property.
2. Property that can be developed in conformance with local zoning will be kept on the tax roles and developed in a compatible manner.
3. By instituting a roll-over fund and giving the Secretary the specific authority to seek injunction relief, park resources and tax dollars will be saved.
4. Having an effective enforcement mechanism in place should act as a deterrent to those who felt it was worth the risk to violate local zoning under the current provisions.
5. Effective zoning enforcement protects both park values and private property investments within the Seashore.

RESOLUTION SUBMISSION

No. 16

For Meeting Of: November 1, 1982

Moved By: Dooley

Seconded By:

Short Title: HOME RULE MESSAGE - OPPOSITION TO HR-6771 - FIRE ISLAND NATIONAL SEASHORE

Department: DEPUTY SUPERVISOR

Reason: Encroaches upon home rule powers of Town.

Dollars Involved (+ or -): none

Execution of Document Required: no

AIS:mjb
10/25/82

PRESENT	ABSENT		AYE	NO	NOT VOTIN
		COUNCILMAN BURKE			
		COUNCILMAN MACCHIA			
		COUNCILMAN DOOLEY			
		COUNCILMAN GERRARD			
		COUNCILMAN LOSQUADRO			
		COUNCILMAN ZIMMER			
		SUPERVISOR ACAMPORA			

RESOLUTION NO. 28 OF NOVEMBER 1, 1982 HOME RULE MESSAGE OF THE TOWN OF BROOKHAVEN - OPPOSITION TO BILL NO. HR-6771 - FIRE ISLAND NATIONAL SEASHORE

WHEREAS, it has come to the attention of the Town Board of the Town of Brookhaven, Suffolk County, New York, that Bill No. HR-6771 has been introduced in the House of Representatives of the United States Congress; and

WHEREAS, the purpose of said legislation would be to modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes; and

WHEREAS, the Town Board views such legislation as being overly broad, vague and indiscriminate and not in the best interests of all Fire Island residents and homeowners in Brookhaven Town; and

WHEREAS, to support such legislation in its present form might permit the Federal Government to take abusive action as it has taken in the past with respect to Fire Island National Seashore in the Town of Brookhaven; and

WHEREAS, it is the opinion of the Town Board of the Town of Brookhaven that Bill No. HR-6771 encroaches upon the home rule power of the Town of Brookhaven to govern in zoning matters; and

WHEREAS, the new Great South Beach zoning ordinance recently adopted by the Town Board is still awaiting approval by the United States Department of the Interior,

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Brookhaven, by adoption of this resolution, that it is hereby opposed to Bill No. HR-6771, in its present state, as being an encroachment upon the home rule power of the Town of Brookhaven and as not being in the best interests of the residents of Fire Island and the Town of Brookhaven, and be it further

RESOLVED that the Town Clerk of the Town of Brookhaven is hereby authorized and directed to forward copies of this resolution to:

The President
The White House
1600 Pennsylvania Avenue
Washington, D. C.

Hon. Alfonse D'Amato
United States Senate
733 Park Avenue
New York, New York 10017

Hon. Daniel P. Moynihan
United States Senate
733 Park Avenue
New York, New York 10017

Hon. Thomas J. Downey
U. S. House of Representatives
Four Udall Road
West Islip, New York 11795

Hon. William Carney
U. S. House of Representatives
2400 North Ocean Avenue
Farmingville, New York 11738

Hon. Thomas P. O'Neill
U. S. House of Representatives
United States Congress
Washington, D. C.

97TH CONGRESS
2D SESSION

H. R. 6771

To modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 1982

Mr. DOWNEY introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

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A BILL

To modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fire Island National Seashore Amendments Act of 1982".

SEC. 2. Section 2 of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e–1), is amended by adding at the end the following new subsections:

"(h)(1)(A) The Secretary shall sell any property described in subparagraph (B) of this paragraph acquired by condemnation under this Act—

"(i) to the highest bidder;

"(ii) at not less than the fair market value; and

"(iii) subject to covenants or other restrictions that will ensure that the use of such property conforms to the standards specified in regulations issued under section 3(a) of this Act which are in effect at the time of such sale and to any approved zoning ordinance or amendment thereof to which such property is subject.

"(B) The property referred to in subparagraph (A) of this paragraph is any property within the boundaries of the national seashore as delineated on the map mentioned in section 1 except—

"(i) property within the Dune District referred to in subsection (g) of this section;

"(ii) beach or waters and adjoining land within the exempt communities referred to in the first sentence of subsection (e) of this section; and

"(iii) property within the eight-mile area described in the second sentence of subsection (e) of this section.

"(2) Notwithstanding any other provision of law, all moneys received from sales under paragraph (1) of this subsection may be retained and shall be available to the Secretary, without further appropriation, only for purposes of acquiring property under this Act.

"(i)(1) Upon or after the commencement of any action for condemnation with respect to any property under this Act, the Secretary, through the Attorney General of the United States, may apply to the United States District Court for the Eastern District of New York for a temporary restraining order or injunction to prevent any use of, or construction upon, such property that—

"(A) fails, or would result in a failure of such property, to conform to the standards specified in regulations issued under section 3(a) of this Act in effect at the time such use or construction began; or

"(B) in the case of undeveloped tracts in the Dune District referred to in subsection (g) of this section, would result in such undeveloped property not being maintained in its natural state.

"(2) Any temporary restraining order or injunction issued pursuant to such an application shall terminate on the date the United States acquires title to such property or, if such proceedings are terminated without the United States acquiring title to such property, on the date of such termination.".

SEC. 3. Section 3(e) of the Act entitled "An Act to establish the Fire Island National Seashore, and for other purposes", approved September 11, 1964 (16 U.S.C. 459e–2(e)), is amended to read as follows:

"(e) If any property, including improved property but excluding undeveloped property in the Dune District referred to in section 2(g) of this Act, with respect to which the Secretary's authority to acquire by condemnation has been suspended under this Act—

"(1) is, after the date of the enactment of the Fire Island National Seashore Amendments Act of 1982, made the subject of a variance under, or becomes for any reason an exception to, any applicable zoning ordinance approved under this section; and

"(2) such variance or exception results, or will result, in such property being used in a manner that fails to conform to any applicable standard contained in regulations of the Secretary issued pursuant to this section and in effect at the time such variance or exception took effect;

then the suspension of the Secretary's authority to acquire such property by condemnation shall automatically cease.".

○

Town of Brookhaven
Patchogue, Long Island, N.Y.
1655

ENRIETTA ACAMPORA, SUPERVISOR

Town Hall - 205 South Ocean Avenue
Patchogue, L.I., New York 11772
516-654-7806

September 23, 1983

Mr. Walter Reich
30 West Woodside Avenue
Patchogue, New York 11772

RE: HR Message - Opposition to HR-3697
Fire Island National Seashore

Dear Walter:

In response to your telephone request, enclosed is a copy of the above-captioned Home Rule Message which was adopted at the September 20th Town Board meeting.

Sincerely,

Henrietta
Henrietta Acampora
Supervisor

HA/rmr
enc.

RESOLUTION NO. OF SEPTEMBER 20, 1983
HOME RULE MESSAGE - OPPOSITION TO BILL
NO. HR-3697 - FIRE ISLAND NATIONAL
SEASHORE

WHEREAS, it has come to the attention of the Town Board of the Town of Brookhaven, Suffolk County, New York, that Bill No. 3697 has been introduced in the House of Representatives of the United States Congress; and

WHEREAS, the purpose of said legislation would be to modify Federal land acquisition and disposal policies carried out with respect to Fire Island National Seashore, and for other purposes; and

WHEREAS, the Town Board views such legislation as being overly broad, vague and indiscriminate and not in the best interests of all Fire Island residents and homeowners in Brookhaven Town; and

WHEREAS, to support such legislation in its present form might permit the Federal Government to take abusive action as it has taken in the past with respect to Fire Island National Seashore in the Town of Brookhaven; and

WHEREAS, it is the opinion of the Town Board of the Town of Brookhaven that Bill No. HR-3697 encroaches upon the home rule power of the Town of Brookhaven to govern in zoning matters; and

WHEREAS, the new Great South Beach zoning ordinance recently adopted by the Town Board is still awaiting approval by the United States Department of the Interior,

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Brookhaven, by adoption of this resolution, that it is hereby opposed to Bill No. HR-3697 in its present state, as being an encroachment upon the home rule power of the Town of Brookhaven and as not being in the best interests of the residents of Fire Island and the Town of Brookhaven, and be it further

RESOLVED that the Town Clerk of the Town of Brookhaven is hereby authorized and directed to forward copies of this resolution to the following persons:

The President
The White House
1600 Pennsylvania Avenue

Hon. Alfonse D'Amato
United States Senate
733 Park Avenue
New York, New York 10017

Hon. Daniel P. Moynihan
United States Senate
733 Park Avenue
New York, New York 10017

Hon. Thomas J. Downey
U. S. House of Representatives
Four Udall Road
West Islip, New York 11795

Hon. William Carney
U. S. House of Representatives
2400 North Ocean Avenue
Farmingville, New York 11738

Hon. Thomas P. O'Neill
U. S. House of Representatives
United States Congress
Washington, D. C.

TOWN OF
OLATHE
1882-1982 Centennial
P.O.Box 789
Olathe, Colorado 81425
Phone (303) 323-5601

October 25, 1983

The Honorable Malcom Wallop
Chairman, Subcommittee on Public
Lands and Reserved Water
Senate Committee on Energy and
Natural Resources
308 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wallop:

I have received a copy of the testimony given before the U.S. Senate Subcommittee on Public Lands and Reserved Water on October 6, 1983, by Mr. Delmar Vail, Deputy Director of BLM. The testimony of this government official in regard to the Olathe Reservoir bill (SB 1547 and HR 1191) is filled with factual distortions which seriously concern myself, the Olathe Town Board of Trustees, and citizens in and around the Town of Olathe, Colorado.

In his testimony Mr. Vail states specifically that "The lands were conveyed (in 1919) at less than fair market value for a public purpose." I'm not certain what Mr. Vail or anyone at BLM or OMB knows about fair market value of unimproved grazing land in western Colorado in the early 1900's. The people who do remember such things are those local folks who were alive at the time or can recall what their parents told them about land prices during this era.

I have enclosed statements from local residents that strongly refute Mr. Vail's and BLM's contention that Olathe paid less than fair market value for the 640 acres in 1919. These statements, which cover the recollection of persons from about 1910 to the 1930's, show unequivocally that 1919 fair market prices for unimproved grazing land in the area of our Reservoir could not have been more than $1.25 an acre. The position of BLM regarding the "Town receiving an unfair windfall at the expense of the United States," is based in the same substance that covers the boots of many local cowboys.

The Town of Olathe's position is simply that we paid at or above fair market value for the land sixty-four years ago, and now the Federal Government believes that we should again, only at 1983 prices. I finally understand how the American Indian must have felt when dealing with such logic.

The current fair market value figure used by BLM is $250,000. We are interested in knowing by what formula BLM has determined this value. We are confident that this valuation includes water and land improvements made on the Reservoir by Olathe over the past seventy years. By any standard of reason, the U.S. Government's claim that Olathe, given the passage of this legislation, will gain a windfall on this property is a ludicrous assertion, and particularly so when one realizes that BLM's current fair market value figures are based on improvements we ourselves have made on the land.

We, therefore, believe that the BLM's testimony of land values either in 1919 or 1983 is grossly misleading. BLM hinges its concerns on the Federal Government's presumed loss, the local community's presumed gain, and the "precedent" setting nature of such legislation. We believe the BLM's concern about "precedent" is an issue intended to thwart the meaning of the legislation, which is simply to provide an unclouded title to the Reservoir property for public use as determined by Olathe, not the BLM.

Mr. Vail had another statement in his testimony that makes us Olatheans sould like crooks. He stated that given the language of the proposed legislation, "If the Town were to mortgage the property conveyed under the 1919 act, it would appear that there would be a distinct possibility of default." I'm not certain about Vail's track record in municipal financial analysis across the nation, but in our case, he is, once again, dead wrong. In 1982 Olathe celebrated 100 years of existence. In all that time never once did the Town forfeit on its indebtedness. In our part of the country, we are fiercely protective of our reputations in operating an efficient, honest, and financially solvent government. Maybe Mr. Vail's experience at the Federal level has led him to forget that such attitudes are still possible. Vail adds insult to injury when he states that "there does not appear to be much incentive for the Town to repay such a loan."

Finally, a quick comment on an element of the proposed legislation that is perhaps the most difficult for us to describe. The Town of Olathe has used the property for a water supply since 1912. As a fellow westerner, Senator Wallop, you understand the importance of water in our country. When the Olathe Reservoir and Pipeline went into service, the Town had a giant celebration to mark the occasion. Pure mountain water had replaced murky and hazardous well water as a potable water supply. Over the years Olathe residents provided free labor in maintaining the Reservoir and Pipeline both in winter and summer. Many old timers still remember spending weeks on end in the hills during the severely cold winter months to keep the pipe from freezing. My point here is that this dedication has turned the Reservoir into an important link with the past. It has become a part of our Town's heritage. These are strong ties that are not severed easily.

For these reasons, the Town will never casually part with the property. Such a feeling lies at the roots of our interest in passing SB 1547 and HR 1191. But even more, these attitudes will ensure the protection of this property in Olathe's and the public's best interest if the legislation becomes enacted into law.

Senator, thank you for the opportunity for making some of our concerns known. I urge the early and favorable consideration of SB 1547.

Very truly yours,

John Harold
Mayor

JH:cs

Enclosures

cc Rep. Ray Kogovsek
Sen. Gary Hart
Sen. William Armstrong
Bob Burford

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Phone TR 4-4370
401 MAIN STREET BOX 246
DELTA, COLORADO 81416

October 21, 1983

TO: Mayor John Harold

FROM: John Davis

I have been a resident of Colorado in the Delta County area since 1893. My many business interests have included: Owner, President, and Treasurer of Davis Clothing Company for 72 years, Director of American Life Insurance Company, 32 years, Director of Delta Savings and Loan, 62 years, and President of Delta Savings and Loan for 32 years. I have also been active in state and local politics.

I have traded in real estate all my life and remain active in political, business, agricultural and real estate affairs to date.

In light of the above, I believe I am experienced and knowledgeable enough to render an opinion on land values in the area. During the 1911-1921 period unimproved mountain land in the Olathe-Delta area, such as that purchased for $1.25 per acre by the Town of Olathe, which was covered with scrub brush, sagebrush, oak and rocks, was not worth much and couldn't really be used for grazing. The fair market value of land such as this was not worth more than $1.00 per acre.

For this reason I feel that the price paid by the Town of Olathe for the Olathe Reservoir Property was indeed fair market value

Sincerely,

John W. Davis

John W. Davis

"Serving the people of Western Colorado Since 1912"

TRANSCRIPT OF CHARLES M. ROSS STATEMENT

In 1923 or '24 T. L. Kelley homesteaded 640 acres within 5 miles of Olathe water works. Proved up on it 5 years later and sold it to Dean Allison for $2500.00 Perry Kelley homesteaded 160 acres east of T. L. Kelley homestead and sold it for $2500.00 about the same time. Josephas Kelley, my wife's father, bought the relinquishment on 160 acres about 1920 from a widow with a cabin on it under the irrigation project for $800. He hired a four room house built on it for $800.00

The Bureau of Reclamation sold some 20,000 acres of what was called sub-marginal land, "Land that no one would to homestead," around the edge of the project for $1.25 per acre. And some good farm land which cornered into fields which was privately owned as high as $25.00 per acre for one 20-acre tract just across the creek from Shavano Falls.

I was working for the Bureau of Reclamation at the time and helped to dispose of this land, selling a lot of it to adjoining farmers. This 20 acres on the creek was the highest tract sold. Then after the project was taken over in 1934, I stayed with the Uncompahgre Valley Water Assn. as water master and had charge of 16 ditch riders and some 50 construction and maintenance workers. It was also my responsibility to lease out their sub-marginal land each year, which I did. The rental price for grazing was 5 cents per acre per year and land that could be irrigated at 50¢ per acre.

I leased 150 acres for 5 years and farmed it with hired help at 50¢ per acre for irrigated land.

I am very familiar with the water supply for the Town of Olathe and know when and how the people of Olathe managed to establish the pipeline to the Town. The land that the Town of Olathe now wish to purchase, in my judgment is in the same value as the land which I have described herein, which at that time would have been valued by the U.S. Government at $1.25 per acre.

Charles M. Ross

In 1923 or 24
J. L. Kelley homesteaded 640 acres
within 5 miles of Olathe water western
proved up on it 5 years later and
sold it to Dean Allison for $2,500.00
Perry Kelley homesteaded 160 acres
East of J. L. Kelley homestead and sold
it for $2,500.00 About the same time.

my step father →

Josiphar Kelley bought the Filing -
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20 acre track just across the Creek
from Shavano falls.

1 I was working for the Bureau of Reclamation at the time and helped to dispose of this land, selling a lot of it to adjoining farmers; The 20 acres on the Creek was the highest tract sold.

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I am very familiar with the water supply for the town of Olathe and knew when and how the people of Oathe managed to establish the pipeline to the town. The land that the town of Olathe now wish to purchase in my judgement is in the same value as the land which I have described herein, which at that time would have been valued by the U.S. Government at $1.25 per acre.

Charles M. Ross

I, Chester L. Torrey, do hereby state that I have lived on the property which my father homesteaded in 1905, as well as 80 acres adjourning. I also have been in the farming and livestock business most of that time. These farms are located about 16 miles north of the Olathe Town Reservoir in valley.

In 1930 I purchased 1600 acres of sage brush land about 6 miles northeast of said reservoir for $6,000 or about $3.75 an acre. This land was most all sloping ground and not in a canyon with two log houses located thereon and 1360 acres fenced. On my abstract there was an entry where 40 acres had sold for $1.00 in 1890.

With my experience in the livestock and farming business over many years, I would consider that $1.25 an acre would be a fair market value of the land located and described as follows, where the Olathe Town Reservoir was in the year 1920:

SE¼ of Section 24, Township 48 North, Range 12 West, N.M.P.M., and the SE¼, the E½ of SW¼ and Lots 3 and 4, Section 19 and the SW¼ of Section 20, all in Township 48 North of Range 11 West, N.M.P.M.

Chester Torrey
Chester L. Torrey

Montrose, Colo.
Oct 2I, 1983

To whom it may concern:

This is to say that I came to Montrose in I909, entered the Grocery and Bakery Business and in I9I7 sold the business and moved to Olathe where I again went into Grocery and meat business. Naturally I became involved in the civic and welfare of the town and community, serving on the town council, town Tres, and on the school board and our main concern was water for the town of Olathe.

This land located between the East fork and West fork of Dry Creek is a rough area and the elevation is lower than your better pasture land making it less valuable. In early days this land would have been appraised at lower than $I.25 per acre.

T H Cox
T.H. Cox

October 21, 1983

I, Howard Hoover, have lived in the Olathe area all my life since coming here with my family in 1915. I dealt in real estate and farm ground for the majority of my life.

In 1917 the land near the Olathe Reservoir was worth very little. It could be purchased for a song--$.50 or $1.00 an acre. Whatever money you had you could buy the land.

About 1936 I leased a 500 acre ranch, eighty acres of which were irrigated, with an option to buy. This range land was located about seven or eight miles from the Olathe Reservoir property. I could have purchased the land for $3.00 an acre, which was fair market value at that time.

About 1935 Steele Bergen had a sheep operation on a section of ground near the Olathe Reservoir, which went broke. He abandoned the land because it was so worthless.

For the above reasons, I believe the $1.25 per acre the Town of Olathe paid for the reservoir property was fair maket value at that time.

The above information is true and accurate to the best of my recollection.

Howard C Hoover

Howard Hoover

R.J. DAVIS
Box 26
Olathe, Colo. 81425

I, R. J. Davis having been a Real Estate Broker in the Olathe community for the past thirty years and am very familiar with the property owned by the Town of Olathe described as follows:

located between the East Fork and the West Fork of Dry Creek Basin.

My father owned a ranch about one mile from where Dry Creek enters the valley which he purchased about 1900. I worked on the Olathe pipe Line during a freeze up about 1946-47. Therefore, I am very familiar with the land described. Due to the rough terrain, which is very rocky and rugged with only a small part in sage brush it is not suitable for much grazing. At the lower altitude there is only enough rainfall for sage brush. Due to the very low price of livestock and the depressed economy at the time they purchased this land there was very limited demand for this type of property.

Considering the circumstances at the time this land was purchased I feel I would have appraised it at $1.25 an acre or $800.00 as a fair market value.

R.J. Davis
R. J. Davis Broker

October 20, 1983

My father, T. C. Anderson, purchased grazing land in 1933 and 1934 on Horsefly Mesa in Montrose County (elevation about 8500 feet) for $3.50/acre. This was considered as some of the best grazing land around. There were plenty of springs to supply water for the livestock all summer. In fact, in a dry year many of the neighboring ranchers would bring their livestock over to one spring that flowed more than a two-inch pipe could carry. This land for pasture use has approximately three times the carrying capacity as the unirrigated land that is 1000 feet less in elevation, which is the approximate elevation of the Olathe Reservoir property.

Wallace Q. Anderson
Wallace Q. Anderson

TO WHOM IT MAY CONCERN:

G. H. Brown and Son, my father and grandfather, purchased a parcel of ground in Hank's Valley approximately fifteen miles southwest of Olathe Reservoir Property in the early 1920's for $1.00 per acre.

J. Edwin Brown
J Edwin Brown